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VOL. XXI JANUARY, 1918 No. 3

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THE GOVERNMENT OF AUSTIN'S COLONY, 1821-1831

EUGENE C. BARKER

1. The Eastern Interior Provinces, 1820

In 1820, when Moses Austin made his memorable journey to ask permission to settle three hundred families in the Spanish province of Texas, the territory was one of the Eastern Interior Provinces (*Provincias Internas de Oriente*), and it is therefore necessary to notice briefly the political history of this administrative division of New Spain. By a royal order of August 22, 1776, all the northern provinces of Mexico had been separated from the jurisdiction of the viceroy and placed under the authority of a commander who was responsible directly to the crown. The division thus created was the *Provincias Internas.* Another royal order of May 30, 1804, directed the division of this into the Eastern and Western Provinces, but was not carried into effect. It was renewed in 1811 and was finally effected in 1813, when General Joaquin de Arredondo became the first Commandant of the Eastern Interior Provinces. Texas, Coahuila, Nuevo Leon, and Santander or Tamaulipas constituted this district.[1] The commandant was both civil and military head of the provinces, and was independent of the viceroy, though the financial administra-

[1]This information is derived mainly from the royal orders of November 22, 1792, and May 30 1804, and an extract of an order of the Regency quoted by Salcedo in a letter to Minister of War, November 22, 1812, in the Bexar Archives. Bancroft, H. H., *North Mexican States and Texas*, I, 636-45, and II, 27, supplements the documents.

tion was subordinate to the intendent of San Luis Potosí.[2] Each province had its own governor and military commandant and was subdivided, or divisible, into departments, districts (*partidos*), and municipalities. Texas constituted one department, and in 1820 contained but two organized municipalities, Bexar and La Bahia, the present Goliad. The government of a municipality, which included not only the town but much of the surrounding country, was an ayuntamiento.

Prior to 1820 there does not appear to have been anything that might be considered a federal or inter-provincial legislative body, but in the summer of that year Arredondo received news of the King's renewed acceptance of the Constitution of 1812, with orders to have his provinces elect deputies to the Spanish Córtes and representatives to a provincial deputation. The Eastern Provinces were allowed two deputies in the Córtes, and representation in the provincial assembly was to be based on population as shown by the census of 1818. A *"junta preparatorio,"* consisting of eight civil and ecclesiastical officials was to divide the provinces into electoral districts and apportion representation.[3]

On July 6 this *junta* met at Monterey. It recognized Bexar as the capital of Texas, and instructed the Governor to have an elector chosen to come to Monterey and join those of other districts in electing deputies to the Córtes and to the provincial deputation.[5] The local procedure was somewhat elaborate. First, Bexar chose twenty-one electors and La Bahia eleven. The Bexar delegation then selected two representatives and the La Bahia electors one; and on September 10 these three met at Bexar and selected Juan Manuel Sambrano as the provincial elector.[6] On October 1 the electoral *junta* of the four provinces under Arredondo's command met at Monterey and elected deputies to the Córtes. The next day it elected the provincial deputation, composed of seven delegates—two each for Coahuila, Nuevo Leon,

[2]This statement is based on correspondence of 1820 in the Bexar Archives between Arredondo and the intendency of San Luis Potosí.

[3]*Instruccion á la cual deberán celebrarse en las provincias de Ultramar las elecciones de Diputados de Córtes.* . . . Nacogdoches Archives, Texas State Library.

[5]Arredondo to Martinez, August 2, 1820. Bexar.

[6]*Ibid.;* and local election returns of Bexar and La Bahia in Bexar Archives.

and Santander, and one for Texas. The Texas delegate was Ambrosio Maria de Aldasoro, a merchant of Monterey. The commandant general presided over the deputation, and the intendent was a member, but was not present.[7]

The provincial deputation was a creation of the Constitution of 1812 (articles 324-37). Its duty was declared to be, in general, to promote the prosperity of the province. More in detail, it was to apportion and approve the levy of local taxes; establish ayuntamientos according to law; take the census; encourage the education of the young; and to promote agriculture, industry, and commerce. It sessions were limited to ninety days during the year, and half the members retired annually.[8] It was to this body that Arredondo referred Moses Austin's application for a permit to introduce three hundred families into Texas; and on January 17, 1821, it recommended that the petition be approved.

2. *Early Local Government in Austin's Colony*

(*1*) *Powers granted to Stephen F. Austin.*—In August, 1821, after the death of Moses Austin, Martinez recognized Stephen F. Austin as his father's successor, authorized him to explore the country and select the region which he wished to colonize, and approved the terms which he proposed for the distribution of land to settlers.[9] Since the region selected by Austin would be a wilderness, uninhabited and without political organization, and since he himself would have no means of extending administration to it at once, the Governor made it plain that, for a time, Austin must be responsible for the local government. "You will cause them all [the colonists] to understand that until the government organizes the authority which is to govern them and administer justice, they must be governed by and subordinate to you."[10] Early in 1822 Austin found it necessary to visit the City of Mexico to get a confirmation of his permit, and the imperial

[7]An *Aviso*, or printed notice, issued by the electoral *junta* on October 3. Bexar Archives.

[8]Dublan and Lozano, *Legislacion Mexicana*, I, 375-376.

[9]Martinez to Austin, August 14, 1821, in Wooten, editor, *A Comprehensive History of Texas*, I, 472; same to same, August 19, Records of the General Land Office, Vol. 54, p. 68.

[10]Same to same, August 24, 1821, in *A Comprehensive History of Texas*, I, 472.

decree of February 18, 1823, which granted this, provided that he should form his colonists into militia companies; and, until the government of the settlement was organized, charged him with the administration of justice.[11] This was confirmed on April 14 by the supreme executive power which succeeded Iturbide.[12] At Monterey, in May, 1823, on his way home, Austin sought a more particular definition of his position. Did his judicial authority extend to the punishment of capital crimes, or only to the arrest of the criminal for trial at Bexar; and how was the cost of justice to be met? Did he have authority to make war on the Indians? What was to be his rank in the national militia? General Felipe de la Garza, who had succeeded Arredondo as Commandant of the Eastern Interior Provinces, referred Austin's letter to the provincial deputation, and, with its advice, replied on June 16. In all capital case he was to refer the process (record of the trial) and the verdict to the superior government, and while awaiting its report was to work the prisoner on the public roads. He had full authoriy to wage war on the Indians; and was to be lieutenant-colonel of. militia.[13] "In short," said Austin of himself, "the provincial deputation decreed that the should preserve good order, and govern the colony in all civil, judicial, and military matters, according to the best of his abilities, and as justice might require, until the government was otherwise organized and copies of laws were furnished, rendering to the Governor of Texas an account of his acts, or of any important event that might occur, and being himself subject to him and the commander-general. The local government was thus committed to him with the most extensive powers, but without any copies of laws, or specific instructions whatever, for his guide."[15]

(*2*) *Administrative divisions.*—On his return to the colony, Austin found that Governor Trespalacios, who had succeeded Mar-

[11]*A Comprehensive History of Texas*, I, 474.

[12]Gammel, H. P. N., *Laws of Texas*, I, 12.

[13]Austin to Garza, May 27, 1823, and Garza to Austin, June 16, 1823. Records, Vol. 54, p. 84, and Translations of Records of Austin's First Colony, Vol. 1, p. 14, General Land Office.

[15]Gammel, *Laws of Texas*, I, 13.

tinez in August, 1822,[16] had divided the settlement into two districts, one on the Colorado and one on the Brazos, with an alcalde in each to look after details of local administration and justice.[17] In December, 1823, Austin subdivided the Brazos district, and made a third, which he called the San Felipe district;[18] in the fall of 1824 he incorporated into his colony some immigrants who had drifted in and settled on the San Jacinto, and continued the district already there;[19] in January, 1826, he established the district of Mina, on the Colorado;[20] and at the same time, apparently, subdivided the San Felipe district to create the district of Victoria.[21] By the beginning of 1828 there was still another district, making seven in all.[22] Associated with the alcalde in the administration of these early districts there was a "constable" with substantially the authority and functions of such an officer at present.[23]

[16]Trespalacios took over the office of Governor from Martinez on August 17, 1822; and resigned April 17, 1823. See Martinez to Trespalacios, August 17, 1823, and Trespalacios to *junta provincial gubernativa*, April 17, 1823. Bexar Archives.

[17]Austin's statement to his colonists [1829], in *A Comprehensive History of Texas*, I, 458; Gammel, *Laws of Texas*, I, 15. Trespalacios to Bastrop, November 10, 1822 (University of Texas transcripts from Department of Fomento, Mexico): "Have the colonists elect a military commandant and an alcalde or *juez politico* to do justice to all the inhabitants of the district." The same document, with Bastrop's report on the colony, December 11, 1811, is in the General Land Office at Austin, Spanish Records, Vol. 54, pp. 75-78.

[18]Austin's proclamation, December 2, 1823. Austin Papers, miscellaneous. The limits of this district were defined as extending from Chocolate Bayou on the east to the San Bernard on the west, and from the Coast to the Coshattie road in the interior. On January 1, 1825, the district of the Brazos changed its name to Bravo in honor of General Nicholas Bravo. See proclamation of Austin, of that date. Austin. Papers, miscellaneous.

[19]Austin wrote Gaspar Flores, political chief of Texas, on August 26, 1824, that the settlers of San Jacinto wanted to join his colony and suggested that he be allowed to extend his jurisdiction to the left bank of the San Jacinto. Flores approved this request on September 21, and on November 4, 1824, Austin reported that it had been done. All the letters are in the Austin Papers.

[20]Austin to Morrison and Buckner, January 4, 1826. Austin Papers.

[21]*Ibid.* The authority for this statement is a note on the same sheet, without date.

[22]Austin's statement to his colonists [1829], in *A Comprehensive History of Texas*, I, 458; and Gammel, *Laws of Texas*, I, 15.

[23]John Tumlinson to Bastrop, March 5, 1823 (Austin Papers), says he has appointed but one constable to summon witnesses and make arrests.

(3) *Austin's "Instructions and Regulations for the Alcaldes."* —For two years the alcaldes seem to have followed a procedure of their own, each "doing what was right in his own eyes," but probably conforming as nearly as conditions and his own knowledge would permit to the practice of a justice of the peace in the United States. It was power of a sort which they did not enjoy, however. They knew their own people too well and the Mexicans not well enough to feel very comfortable. John Tumlinson, alcalde of the Colorado district, begged Bastrop for a "rule whereby I may in future be governed for the general good and peace of society."[24] Josiah H. Bell, of the Brazos, after confiscating the property of a horse thief to pay for the stolen horses and the cost of capturing him, anxiously asks the Governor to say whether he has done rightly.[25] His successor, John P. Coles, in a somewhat similar case resorted to a jury of six who fined the defendant heavily and suggested that he be banished from the colony.[26]

To introduce a more uniform system, and to relieve the alcaldes of responsibility and embarrassment, Austin, on January 22, 1824, promulgated a set of "Instructions and Regulations for the alcaldes." This constituted a brief civil and criminal code, which Austin apologetically said he had drawn up without the aid of form books or precedents, while subject to all sorts of interruptions; wherefore experience might disclose many errors and omissions which would have to be corrected. His sole purpose in everything was "but to promote the general prosperity and happiness of us all." James Cummins acknowledged receipt of his copy on March 23: "I think them good for which myself and my neighbors give you thanks. May the Lord direct us to administer them properly."[27]

The people complain of the constable's mileage fee of five cents a mile. He has not charged for his own services and time, which he can ill afford to give to the business. Tumlinson was alcalde of the Colorado district. On January 26, 1824, John Austin was appointed constable of the new district of San Felipe and gave bond for $500. Austin Papers, miscellaneous.

[24]Tumlinson to Bastrop, March 5, 1823. Austin Papers.

[25]Bell to Trespalacios, May 4, 1823. Austin Papers.

[26]Coles to Austin, January 31, 1824. Austin Papers.

[27]Austin to Coles, January 25, 1824, and Cummins to Austin, March 23, 1824. Austin Papers. The "Regulations" may be found conveniently in *A Comprehensive History of Texas*, I, 481-492.

The Civil Code provided for the appointment by Austin of a sheriff to execute his own processes as judge, and constables to execute those of the alcaldes; fixed the jurisdiction of alcaldes; and prescribed a definite judicial procedure. The alcalde acting alone had final jurisdiction under ten dollars, acting with arbitrators he had final jurisdiction up to twenty-five dollars, and primary jurisdiction, subject to appeal, in cases up to two hundred dollars. As the first step in settling a case, he must try to bring the litigants to an agreement by "conciliation"—a sort of settlement out of court. If this failed, he proceeded to try the case alone or with the help of arbitrators, as the parties to the suit determined. The political chief, José Antonio Saucedo, approved this code on May 23 and added to Austin's draft two articles, one regulating the treatment of stray animals and the other the registering of marks and brands.[28]

The Criminal Code Saucedo approved the next day, May 24.[29] Articles 1-4 dealt with offences by Indians,—such as violence to colonists, rambling through the colony without license, stealing, etc. Anybody was authorized to arrest and conduct such Indians, without the use of arms, if possible, to the nearest alcalde or captain of militia. If, upon examination by such official, the Indians proved to be guilty, they might be punished by twenty-five lashes. Section 5 dealt with offenses against Indians. The colonists were forbidden under penalty of heavy fines to abuse Indians, being enjoined, on the contrary, to treat them "at all times and in all places in a friendly, humane, and civil manner so long as they deserve it." Several articles covered offenses by and against slaves and provided for the recovery of fugitive and stolen slaves by

[28]Article 30 of Austin's code constituted the first fee bill ever in operation in Anglo-American Texas. The Alcalde's fees were: "Issuing a criminal warrant, 4 bits; for a forthwith summons, 3 bits; subpoena, 2 bits; summons, 2 bits; subpoena for arbitration, 2 bits; judgment, 3 bits; entering stay of execution, 2 bits; entering appeal and writing appeal bond, 8 bits; issuing execution, 2 bits; entering special bail and taking bond in case of attachment, 3 bits; ditto recording, for every 100 words, ½ bit." For sheriff and constable fees: "Serving criminal warrant, 8 bits; serving a forthwith warrant, 4 bits; summons, 2 bits; summoning arbitrators or jury, 3 bits; mileage, going and returning, 5 cents a mile; levying an execution, 2 bits; selling property and collecting money, 4 per cent on sums under $200—and 1 per cent on every $100 after."

[29]Saucedo's certificate is in the Austin Papers, miscellaneous.

their owners. The rest of the regulations dealt with various crimes—some suggested, no doubt, by anticipation and some by actual experience in the colony: murder, theft, robbery, gambling, profane swearing and drunkenness, cohabitation without marriage, counterfeiting or passing counterfeit money, etc. Horse racing was excepted from the general prohibition of gambling, "being," it was explained, "calculated to improve the breed of horses," but no debt contracted thereby was recoverable by law. All cases must be investigated by the alcalde and tried by a jury of six and the record and verdict transmitted to Austin for final judgment. Capital cases must, as we have seen, be submitted by Austin to the authorities at Monterey. Fines were the usual penalties prescribed by the regualtions—to be applied to schools and other public purposes—but whipping and banishment from the colony were allowed. For theft the penalty was a fine of three times the value of the stolen property, and hard labor on public works "until the superior government decides on the case." Alcaldes must keep a permanent record or docket of all cases tried by them and pass it on to their successors.

In a letter to the political chief in August, 1824, Austin suggested a scale of moderate judicial fees which he asked authority to put in operation for so long as he should be responsible for the administration of justice.[30] He had charged nothing for any public service up to that time,[31] and in 1829 he again wrote that up to February, 1828, when the ayuntamiento was organized "the labor and expense of the local government fell principally on me individually."[32]

Austin's "Old Three Hundred" were a remarkably law-abiding people. He wrote Bastrop in December, 1824, that since his return from Mexico, more than eighteen months before, there had been only one theft.[33] Had the alcaldes exercised judicial functions alone, therefore, their public duties would have been unimportant, but they performed other services. They were Austin's

[30]Austin's blotter, August 26, 1824. The rates suggested were: Cases involving from $25 to $40 six *reales*, $40 to $70 eight *reales*, $70 to $100 twelve *reales*, and above $100 two dollars.

[31]Austin to his colonists, June 5, 1824. Austin Papers, miscellaneous.

[32]*A Comprehensive History of Texas*, I, 48.

[33]Austin to Bastrop, December 22, 1824. Austin Papers, miscellaneous.

local correspondents, receiving, promulgating, and executing his orders, and keeping him informed of local opinions and conditions; supervised militia elections; kept their districts free of prowling Indians and vagabonds; settled quarrels; attested contracts; and performed what passed in effect for a civil marriage ceremony. They occupied, in fact, a sort of patriarchal relation to their respective communities.

With the rapid influx of immigrants, after 1825, judicial business increased and Austin found himself unable to spare the time from other pressing demands to attend to appeals from the alcalde courts. On July 6, 1826, he issued a proclamation ordering each of the six districts then existing to elect a representative to meet with him to form a new judicial system and adopt an equitable system of taxation for its support and defend the settlements from hostile Indians.[34] The result of this conference was the creation of a supreme court composed of any three alcaldes. This might hear appeals from Austin himself, but it is evident that in most cases the appeal was directly from a single alcalde to this body without going before Austin. The court of the alcaldes, as he called it, held three sessions a year at San Felipe.[35]

In November, 1826, Austin outlined for Bastrop, the Texan deputy in the State Congress, or Legislature, a complete judicial system for Coahuila and Texas. He thought this one of the State's most pressing needs. Texas should have two circuit courts, one with jurisdiction from the Sabine to the Lavaca and the other from the Lavaca to the western limit of the State; and there should be a superior court with sessions alternately at Bexar and Saltillo. The circuit courts should have final appellate jurisdiction over all cases sent up from the alcalde courts, and original jurisdiction above the alcalde's range. In some instances, of which he failed to give an illustration, he thought the superior court should have original jurisdiction; but in general it would confine itself to a review of the circuit courts. He hoped that the jury system could be established in criminal cases, and, in the meantime, appeals should be allowed in all capital cases, so that

[34]Proclamation of July 6, 1826. Austin Papers, miscellaneous.

[35]Austin's reply to an interrogatory in the case of Keep *vs.* Groce, Austin Papers, undated, 1830-1835; Austin's Explanation to his Colonists, a pamphlet published in 1829, in *A Comprehensive History of Texas*, I, 459.

the decision of life or death should not rest with one man. Sessions of the court in the eastern circuit might be fixed for the second Monday of October, February, and June at San Felipe, and the second Monday of December, April, and August at Nacogdoches. At both places there should be a resident clerk to keep records, issue processes, etc., and a sheriff or *alguacil* to execute writs and decrees. Fees of all officers should be fixed and forms provided for uniform procedure. Judicial proceedings in English translated into Spanish by an official translator should be legalized. This, in fact, was essential. Notaries should be created, and a digest of laws in force should be published in book form, distributed to officials, and sold at a moderate price to the people.

Turning then to general administration, Austin urged the appointment of a sub-political chief (*gefe subalterna*) at San Felipe, with authority from the Sabine to the Lavaca, or, better, two subalterns, dividing this territory between them, he should understand English and Spanish and be a medium of communication between the political chief and the alcaldes.[36]

The main features of this plan were gradually enacted during the next eight years, but at the moment nothing was done.

Want of specific laws was from the beginning a source of embarrassment and perplexity to Austin, as it had been to the alcaldes. He always conformed to Mexican laws and procedure when he could ascertain what they were, and when he could not, or when they did not seem to apply to the peculiar colonial conditions, "necessity," as he wrote Lucas Alaman, "compelled me to adopt provisional and temporary regulations."* Some of the laws which he early urged upon Bastrop to meet "pecular colonial conditions" were a probate law for the setttlement of estates whose heirs resided in foreign countries; a law concerning the sale, deeding, and conveyancing of land by the colonists; and a law staying for twelve years the enforced payment of debts contracted by colonists before coming to Texas.

(*4*) *The Militia.*—Two other subjects demanded Austin's

[36]Austin to Bastrop, November 3, 1826. Austin Papers, miscellaneous.

*Austin to Alaman, Janary 20, 1824. University of Texas transcripts from Department of Fomento, Mexico.

early attention—the organization of the militia and the establishment of a land system. By the national law of April 9, 1823, every male citizen between the ages of eighteen and fifty was subject to militia service, and, as we have seen, Austin was by the terms of his commission commander-in-chief of the militia of his colony. For a time the menace of the Indians was an effective stimulus to the observance of the law. In June, 1823, while on his way from Mexico, Austin issued an order dividing the scattered settlements into five districts and instructing the inhabitants to elect company officers in each.[37] For several years the service was fairly burdensome, and from time to time Austin had to subdivide the original districts to permit greater flexibility and local independence in dealing with marauding tribes.[38] A history of the militia, if material were available, would involve a history of the Indian wars of colonial Texas. By 1829 the white man's power was established, raids became infrequent, and interest in the militia organization diminished to such a degree that Austin complained that less than thirty per cent of the voting strength of the companies took the trouble to vote for officers.[39] They had much more important matters to occupy them.

(*5*) *The Land System.*—This topic deserves treatment in a separate paper. Only a summary can be given here. The subject received Austin's closest attention, and brought him more annoyance than any other problem with which he had to contend. He had wide discretion in the allotment of land to settlers in his first contract, and some who received less than others accused him of partiality and unfairness. He knew the history of the harassing litigation that beggared the early settlers of Kentucky and Tennessee, and the orderly surveys and necessary formalities and restrictions which he insisted on to prevent such a condition in Texas seemed to some who could not understand their beneficent purpose merely irritating interferences of a petty tyrant. His surveyors and clerks had to be paid, and because he exacted a fee of 12½ cents an acre for the land, they abused him for exploiting them.

[37]Proclamation. Austin Papers, miscellaneous.

[38]Proclamation dividing the fifth district, December 5, 1823; and of March 31, 1824, dividing the third district. Austin Papers, miscellaneous.

[39]Austin to Bell, April 4, 1829. Austin Papers.

First as to the fees: on August 18, 1821, just before leaving San Antonio to select the land for his colony, Austin submitted a plan to Governor Martinez for the distribution of the land to settlers. Every man, whether married or single, should receive a town lot and a parcel of farming and grazing land, the former fronting on a water course. If married, two hundred additional acres should be granted in the wife's right, eighty acres for each child, and fifty for each slave. Martinez endorsed the plan and forwarded it to the commandant for approval. In the meantime, he thought Austin might proceed on the assumption that it would be approved, as he felt sure that no important alterations would be made by his superiors. From Natchitoches Austin wrote him on October 12 that he had decided to diminish the amount of land to single men and increase it to heads of families, giving them 640 acres for a headright, 320 acres for the wife, 160 for each son, and 80 for each slave.[40] In neither of these communications did Austin say anything to Martinez about charging the colonists a fee for the land.[41] He had, however, already made contracts with colonists, agreeing to deliver land at 12½ cents an acre and bear all costs himself for surveying, issuing and recording titles, stamped paper, etc.[42] Half was to be paid on receipt of title and the other half a year after. On returing to New Orleans, Austin published these terms in the newspapers and they were widely copied by the western press.[43] He sent Martinez and Garza copies of the papers containing his announcements and assumed that by their silence they approved. It must be obvious

[40]Austin to Martinez, August 18, and Martinez to Austin, August 19, 1821. Austin Papers. Austin to Martinez, October 12, 1821. University of Texas Transcripts, archives of the Department of Fomento, Mexico.

[41]Austin said in his explanation to his colonists (June 5, 1824, Austin Papers, miscellaneous), that he wrote Martinez from Natchitoches "that as the land which I was to receive for myself would be no compensation for my labors and expenses in an enterprize of such magnitude, I must receive something from the settlers or I could not proceed with the Business."

[42]Agreement with J. H. Bell, October 6, 1821, and with William Kincheloe, October 16. Austin Papers, miscellaneous.

[43] . . . "And explicity stated that those who settled under the said permission to my father must pay me 12½ cents per acre which would be in full for all expences of surveying and everything. I was particular to make these terms as public as possible that no one might come without knowing distinctly the conditions of his reception."—Austin to his colonists, June 5, 1824.

to any one, he argued, that he would never have undertaken the labor and expense of establishing the colony without expecting some compensation besides the land which he might acquire. Before this question became an issue with his colonists, however, he was to have a bout with the government and gain through delay and disappointment an insight into private and official Mexican character the lack of which brought partial or complete failure to every other empresario who undertook to colonize a grant.

On December 15, 1821, Gaspar Lopez, who had succeeded Garza as commandant general of the Eastern Interior Provinces, wrote Martinez that Austin had no authority to make allotments of land, that his applications must be presented to the government, and that should the settlers arrive in the meantime, the nearest ayuntamiento should locate them provisionally until the supreme government passed the necessary provision.[45] Martinez reported the substance of this to Austin in March, 1822, and advised him, if he wished to avoid delay, to go to the capital and urge his cause in person. After one night's deliberation Austin set out for Mexico City, where he arrived on April 28. He found the new government unwilling to make a special order of his case, and had to wait with what patience he could until Congress should pass a general colonization law. The committee in charge of the subject worked slowly, with many interruptions and diversions, so that it was not until January 4, 1823, that the law was passed. "I can," said Austin, "without boasting say that my constant Exertions and importunity with the Members both directly and indirectly through my friends produced this law."[47] Six weeks later (February 18) the Emperor approved Austin's petition to setttle his three hundred families on the terms established by the law. Only two features of the law need be noticed here. One increased enormously the amount of land that Austin had promised his colonists, allowing headrights of a labor (177 acres) of farming land and a league (4,428 acres) of grazing lands; and the other provided for the compensation of empresarios or contractors who introduced immigrants at the rate of 66,774 acres for each two hundred families. With success already within his grasp Aus-

[45]University of Texas Transcripts from Department of Fomento, Mexico.
[47]Austin to the colonists, June 5, 1824. Austin Papers, miscellaneous

tin's hopes were now dashed by the overthrow of Iturbide and the annullment of all the laws passed since his accession. On April 14, however, the constituent Congress confirmed his grant as defined by the imperial decree, and he departed for Texas.[48] He was delayed at Monterey, as we have seen, settling details concerning his authority in the administration of the colony, and did not arrive until mid-summer.

There dissatisfaction already existed over the 12½ cent fee which the settlers had agreed to pay, and in an open letter of August 6, Austin mode it plain that they must fulfill their contracts. He had risked his life, health, and property in the enterprise, and would make the fortunes of all his followers; to the expense already borne he must still add that of surveying and of issuing and recording titles; the government did not pay a cent toward these expenses, and a moment's reflection would convince them that they must help him a little. Those who could must pay money, others any kind of property that would not be a dead loss to him—horses, mules, cotton, hogs, poultry, furs, beeswax, home-made cloth, dressed deerskins, etc.,—part down and the balance in two, three, and four years. Most of what he collected would really go to improve the colony, so that all would benefit from it.[49] Four days later Bastrop, whom the Governor had appointed commissioner to extend titles to the settlers, pointed out to them some of the advantages which they enjoyed through Austin's labors: his grant was confirmed, their titles were secure, and would be issued at once; no other contract had been approved, Austin's grant was limited to three hundred families, Austin was absolute in determining who should be received into the colony, and those rejected by him would have to retire to the interior, there to await the disposition of the government.[50] The murmuring continued, but for a time they paid the fee.[51]

[48]In 1829, Austin published an account of his experiences for the information of his colonists. See *A Comprehensive History of Texas*, I, 451-54.

[49]Austin to Bell, and to Bell, Robertson, Kuykendall, *et al.*, August 6, 1823. Austin Papers.

[50]Bastrop's proclamation "to the Inhabitants of the Colorado District," August 9, 1823. Austin Papers, miscellaneous.

[51]See, for example, Austin's receipts to Jared E. Groce, October 18, 1823, for $326.49, part payment for two leagues of land; to Francis Big-

On October 30, Austin drew up an explicit statement of the conditions of settlement in his colony: settlers must give "the most unequivocal and satisfactory evidence of unblemished character, good morals, sobriety, and industrious habits"; and must have sufficient means to pay for their lands and get a start in the colony as farmers or mechanics. "No frontiersman who has no other occupation than that of a hunter will be received—no drunkard, no gambler, no profane swearer, no idler . . . will he received." Those rejected for bad character would be ordered from the settlements, and, if necessary, escorted out under guard, their own property being seized to pay the cost of the escort. Persons accepted as settlers would receive, as a rule, a league of land of their own choice at the rate or $12.50 per hundred acres, payable in cash, cattle, or negroes, on receipt of title. This payment would include the cost of surveying, issuing and recording title, and all other charges. Persons with large capital or a large family might obtain more than a league. Single men must combine in groups of ten in order to receive a league in common. The next day he issued a public notice requiring newcomers to report immediately upon arrival to the nearest alcalde; if they wished land, they must report to Austtin himself and show evidences of good character before selecting it.[52]

gam, November 17, 1823, for $1291.80; to Benjamin Fowler, November 25, for 200 bushels of corn at fifty cents a bushel; to Alexander Johnson, March 7, 1824, for $231.75 "in surveyor's orders." All in Austin Papers, miscellaneous.

[52]"Terms on which settlers are admitted into the colony formed by Stephen F. Austin in the Province of Texas," October 30, and "Public Notice," October 31, 1823. Austin Papers, miscellaneous. After this one Garner was given ten lashes for entering the colony without the proper credentials, showing Austin's intention of enforcing to the letter the requirement of certificates of character. See Austin to Bell, December 6, 1823. Austin Papers.

The provision for granting more than a league to those whose capital or large families would enable them to improve it was sound policy and was later incorporated in the State colonization law, but many of the settlers, those "North American frontier republicans," as Austin called them, "who felt that they were sovereigns," refused to see in it a valid ground of distinction. Their complaints caused Austin great annoyance, but he was relieved from further embarrassment on this point by the colonization law of March, 1825, which required the approval of all exceptional grants by the Governor.

In the meantime, murmurs over the 12½ cent fees had reached Bexar, and on May 20, 1824, the political chief, Antonio Saucedo, promulgated a schedule of fees which took no account of Austin's contracts. Thereafter for a league of land, the settler should pay $127.50 to the commissioner who gave him his title, $27 to the surveyor, $8 for clerical labor and stamped paper, and $30 to the government, or a total of $192.50,[53] while at 12½ cents an acre it would have cost him $555. Austin believed that Saucedo had no authority to interfere with his private contracts, and in a straightforward review of the history of the colony made a powerful argument for their observance. The enterprise had cost his father's life; he himself had spent three years and much money in getting the colony established; the contract was a fair one; they had accepted it freely and with full knowledge of its terms, and not one of them but knew he was getting good value for his money, because titles in Austin's grant were secure and would be issued immediately, while settlers in other parts of the province had not the slightest assurance that they would ever get titles.[54] If the Governor had the right to annul a private contract, would their titles be safe? Where could one draw the line?[55] When one remembers that the cost and labor of the local administration fell mainly on Austin, that presents to keep the Indians peaceable and sometimes the equipment for campaigns against them were paid for by him, that his house was a place of entertainment for travelers visiting the country with a view to settling, that he paid a secretary $1000 a year chiefly to record titles and prevent conflicts and costly litigation by the colonists,[56] it is easy to understand that his premium lands would not only have been an inadequate compensation; but for years would not have reimbursed him for actual expenses. Much of his difficulty Austin attrib-

[53]Memorandum signed by Austin and Saucedo, May 20, 1824. Austin Papers, miscellaneous.

[54]Settlers outside Austin's Colony realized this advantage very keenly. See, for example, H. Jackson to Austin, San Jacinto, April 3, 1825 (Austin Papers): "The settlers on the east of San Jacinto is unanimous to Continue in your Collony they are willing to sine any pe[ti]tion for that purpose if you are wiling to accept us in your Collony"

[55]Austin's explanatnon to his colonists, June 5, 1824. Austin Papers, miscellaneous.

[56]Austin's memorial to the State Congress, October 11, 1827. Austin papers, miscellaneous.

uted to the colonists' ignorance of the Spanish language and to the indefiniteness of certain laws. "You know," he wrote in 1825, that it is innate in an American to suspect and abuse a public officer whether he deserves it or not. I have had a mixed multitude to deal with, collected from all quarters, strangers to each other, to me, and to the laws and language of the country. They came here with all the ideas of Americans and expect to see and understand the laws they are governed by, . . . Could I have shown them a law defining positively the quantity of land they were to get and no more and a code of laws by which they were to be governed I should have had no difficulty but they saw at once that my powers were discretionary, and that a very great augmentation to their grants could be made, and thus the colonization law itself and the authority vested in me under that law holds me up as a public mark to be shot at by every one.[57]

Many of the settlers offered to pay. No candid man denied the obligation, said John P. Coles;[58] but Austin, knowing that others would refuse, and that efforts to make them pay against their will would injure the colony, relinquished his claims and collected from none.[59] Instead, Bastrop agreed to give him a third of the commissioner's fees, which would yield him $42 a league.[60] Later both Federal[61] and State[62] colonization laws guaranteed such contracts between empresarios and colonists, and in his subsequent contracts Austin took advantage of this.[63] In April, 1825, at the opening of his second colony, he announced that, besides the cost of surveying, stamped paper, and the $30 which must be paid to

[57]Austin to B. W. Edwards, September 15, 1825. Austin Papers.

[58]Coles to Austin, July 7, 1824. Austin Papers.

[59]Austin's statement to his colonists (November 1, 1829), in *A Comprehensive History of Texas*, I, 462.

[60]Austin's "Statement . . . relative to the settlement of the business between S. F. Austin and the late J. H. Hawkins, September 14, 1832. Austin Papers, miscellaneous. An excellent account of Austin's difficulties over the 12½ cent fee was published by Lester G. Bugbee in April, 1899, "Some Difficulties of a Texas Empresario," *Publications of Southern History Association*, 95-113.

[61]Passed August 18, 1824—Article 14. Gammel, *Laws of Texas*, I, 98.

[62]Passed March 24, 1825—Article 9. *Ibid.*, 100.

[63]Erasmo Seguin, Texan deputy in the National Congress, wrote Austin on August 11, 1824, that the colonization law would be passed the next day and that this was the intention of an article, which he quoted. Austin Papers.

the State in installments of four, five, and six years, applicants for a league must pay him $60, the commissioner $15 and the secretary who filed the application and translated and recorded the papers $10.[64] Two years later he announced slight modifications of this schedule,[65] and in November, 1829, put into effect the scale that seems to have continued thereafter. This provided that immigrants must first file information concerning the number, age, and sex of their families and dependents, their occupations, place from which they emigrated, date of arrival in the colony, and certificate of Christianity, morality, and steady habits. If this was found satisfactory, they were given a certificate stating that they had been received by Austin as colonists, which entitled them to select for themselves any unappropriated land in the colony. For this certificate they paid Austin's secrtary $2. Having made their selections, they presented through the secretary a formal petition to the commissioner for a title. For the clerical labors involved in this, including translations, they paid the secretary $5, signed a note promising to pay him $5 more when the title was delivered, and signed a note for $50 to Austin, payable $10 on receipt of title and the balance in one year. "The above," explained Austin, "is a compensation for the labor of translating and attending to getting the titles for the applicant, which I am not bound to do, as empresario, unless paid for it."[66] In addition to this there was the commissioner's fee, fixed by law at $15 for a league of pasture land and $2 to $2.50 for a *labor* of farming land;[67] the surveyor's fee of $4 a mile; and the cost of stamped

[64]"Regulations to be observed by those desiring land in Austin's Second Colony," April —, 1825. Austin Papers, miscellaneous. Saucedo seems to have approved this October 17, 1825.

[65]"Notice," April 16, 1827. Austin Papers, miscellaneous.

[66]Printed notice, dated November 20, 1829, pasted inside the front cover of "applications for land in Austin's colony, Book A," General Land Office. Austin suggested the following form of application:

"To Mr. S. F. Austin, Empresario—I have emigrated to this Colony, as one of the colonists whom you are authorized by Government to introduce; and I request that you will examine my recommendations, and that if found to be agreeably to law, receive me and my family under your contracts with the Government. I agree to the terms published by you on the 20th November, 1829; I am ready to take the oath prescribed by the Colonization Law."

[67]Decree No. 62, Laws of Coahuila and Texas, May 15, 1828, in Gammel, *Laws of Texas*, I, 216.

paper for the application, title, and certified copy.[68] Until 1827 the original title was retained in Austin's office and a certified copy given to the settler, but, realizing the danger of losing loose sheets, Austin asked and obtained permission to record titles in a bound book.[69] The work of transcribing the documents and verifying the copies was done by Austin and his secretary, Samuel M. Williams, and Austin paid a draftsman $5 a day from his own pocket to plat the survey at the end of each title.[70] The volume, in the General Land Office, bears eloquent testimony to his wise and painstaking interest in the welfare of the settlers.

The fees which Austin demanded of colonists who settled his later grants were frequently never paid. Hundreds of notes for $50 each still preserved in his papers at the University of Texas show that many of them did not make even the initial payment on delivery of title. "No one was turned away, or ever waited for his title, because he was poor," said Austin, and most of those who paid did so with cows, horses, mules, hogs, corn, and other produce at a price far above the market.[71] At times, on the contrary, he even lent them the money to pay the surveyor and the commissioner. Some money, however, was absolutely essential, and when he could Austin exacted cash from those who had it. This caused complaints of partiality, in which, to Austin's surprise, those who had profited most from his leniency and discrimination sometimes joined. Characteristically, however, he offered excuses for them: "They did not reflect that it was the interest of all to get the settlement under way, and that if poor men had been turned off because they could not pay their fees, the settlement would have been thinned so much that it would have been totally broken up."

The main features of the system as finally developed by Austin may be restated for the sake of clearness: From the beginning

[68]Austin's "Notice" to the colonists, April 16, 1827. Austin Papers, miscellaneous.

[69]Governor of the State to Gaspar Flores, Commissioner of Austin's Colony, May 31, 1827. Land Office, Vol. 54, p. 105.

[70]*A Comprehensive History of Texas*, I, 459.

[71]Austin's statement to the Colonists, November 1, 1829, in *Ibid.*, 462-63: "I appeal to you all to say whether I would now get 40, 50, or 60 Dlls for horses which I have received at $100, 120, and 150 Dlls and all other property in the same proportion."—Austin to his colonists, June 5, 1824. Austin Papers, miscellaneous.

Austin had sole authority to admit or reject immigrants within the broad limits of his grant, and the law, as well as sound policy required him to prevent the settlement of bad characters. He therefore required applicants to file testimonials of character from responsible persons and take the oath of allegiance to the Mexican government before granting them certificates of admission, which authorized them to select land and have it surveyed by an official surveyor appointed by the commissioner. This done, and the necessary notes and fees attended to, the applicant petitioned for his title, which, upon proper attestation from Austin, the commissioner issued. Essentially, of course, the system was the same as that in the United States, so that Austin's claim to our admiration is not that he originated an excellent system, but that at the cost of much labor and some money he so faithfully adhered to a model already tested by the experience of a generation.

3. Establishment of Normal Government—the Ayuntamiento of San Felipe

Austin's tenure of extraordinary powers was probably more prolonged than either he or the authorities had expected it to be, and was certainly more so than he desired. This was due to the disorganization of the central government, which made it impossible to attend to local affairs. By 1824, however, discussion of the Constitution was sufficiently advanced to warrant Congress in taking steps to put the Federal system into operation, and on February 4 it promulgated a decree for the election of State Legislatures. On May 7 it united Coahuila and Texas into one State, until Texas should be qualified "to figure as a State by itself," and ordered the election of ten deputies for Coahuila and one for Texas to form the Legislature at Saltillo.[72] Texas was represented in the Federal Congress at this time by Erasmo Seguin,[73] and in May Bastrop[74]

[72]Dublan and Lozano, *Legislacion Mexicana*, I, 677, 706.

[73]The salaries of deputies were paid by their respective provinces. The colonists subscribed 640 bushels of corn towards Seguin's maintenance. See list of subscriptions, November 16, 1823, Austin Papers, miscellaneous; also Austin to political chief, December 2, 1823, in translations from Bexar Archives, Texas State Library.

[74]Austin to Alcalde of San Felipe de Austin, May 25, 1824. See also Austin to political chief, April 20, 1824—vote taken by courier yesterday and more than half the colonists have already chosen Bastrop; will

was elected to represent it in the Legislature. Austin, as we have seen, was a steady correspondent of Bastrop's, and made many suggestions for the improvement of local government, but the Legislature was engaged until March, 1827, in framing the Constitution, and the only law passed prior to that time which was of material importance to the colony was the colonization law, and that did not affect the government. Sections VI and VII of the Constitution applied to local government, the first defining the duties, powers, qualifications, and method of election of the political chief, and the second doing much the same thing for ayuntamientos. In both cases the substance of former Spanish laws and practices was embodied, but one provision led to Austin's release legally and formally, at least, from the burden of governing his collection of "North American frontier republicans." This was the requirement that an ayuntamiento must be established in towns which "of themselves or with the territory they embrace contain a population of one thousand souls."[75]

The Constitution prescribed age, residence, property, and educational qualifications and terms of service,[76] but left particular definition of the duties and functions of the ayuntamiento to legislation. Accordingly on June 15 the Governor promulgated a law entitled "regulations for the political administration of the towns."[77] This began by providing that the ayuntamientos in towns with a population under 2,500 should consist of one alcalde, two *regidores,* and one *sindico procurador;* those between 2,500 and 5,000 should add two more *regidores;* those between 5,000 and

make a full report when all votes received; feels sure that Bastrop will be unanimously elected. Translations from Bexar Archives in Texas State Library.

[75]Article 156, in Gammel, *Laws of Texas,* I, 335.

[76]One must be a citizen, over twenty-five years old if single or twenty-one if married, three year a resident of the district, must have "some capital or trade whereby to subsist," and be able to read and write. Elections were to be held the second Sunday and Monday in December. All Alcaldes whether one or more, half the *regidores,* and half the *sindicos* were elected annually. If there was only one *sindico* he held for only one year.

[77]This is omitted in the official publication of the Laws of Coahuila and Texas, and therefore does not appear in Gammel. There is a copy in Spanish in the Austin Papers and a translation in the *Texas Gazette,* October 31, 1829. The translation is anonymous, but was no doubt done by Austin. Among his manuscripts there are a number of notes identical with the footnotes in the *Gazette.* See p. 299, note 2, below.

10,000 were entitled to two alcaldes, six *regidores,* and two *síndicos;* and so on. The duties of the ayuntamiento covered a wide range, including most of the functions of a modern city commission and some of those belonging to the country commissioners—to promote the establishment of hospitals, poor houses and educational and charitable institutions, and to administer them when established; to license qualified and properly certified physicians and druggists and prevent others from practicing; to appoint boards of health, inspect foods, markets, and drug stores, keep the streets clean, visit prisons, drain lakes and stagnant ponds, and wage continual war on every menace to the health of man and beast; to see that streets were straight and ornamented with shade trees, and wherever possible, paved and lighted; to maintain roads and public buildings; preserve the forests; punish vagabonds, drunkards, idlers, and gamblers; promote agriculture, industry, and commerce; administer municipal funds, which, with the consent of the Governor and Legislature, might be raised by taxation; establish and supervise primary schools; and take the census every six months—these were some of the more important duties of the ayuntamiento.

Austin was at Saltillo in the fall of 1827 and took occasion to urge the establishment of constitutional government in his colony.[79] In response to his request the Governor, on November 17, instructed the political chief to order an election for an ayuntamiento with jurisdiction from the Lavaca to the watershed between the Trinity and the San Jacinto and from the sea to the San Antonio Road. Austin would preside over the electoral assembly and install and administer the oath to the newly elected officers, and all cases pending in the present alcalde courts would pass to the constitutional alcalde.[80] On December 11 the political chief transmitted the order to Austin, and he called the election for February 3-4, 1828. Austin realized the importance of choosing competent men who would take their duties seriously,

[79]Austin to the State Congress, October 11, 1827. Austin Papers, miscellaneous.

[80]Austin to J. H. Bell, January 1, 1828. Austin Papers. Austin suggested Ira Ingram for Alcalde, Bell and William Morton for *regidores,* and L. R. Kenney for *síndico procurador.* Thomas M. Duke, M. B. Nuckols, and Rawson Alley, were being mentioned for places, he said.

and it is evident that he did some electioneering.[81] One may suspect in this a reluctance to retire from the helm, but on the contrary he was probably more interested in electing men to whom he could safely surrender his position as buffer between the colonists and the government.

While the election presented to the experience of the colonists little that was new in methods, nevertheless, as the first constitutional election in Anglo-American Texas, it demands a somewhat detailed description. Polls were opened in the old alcalde districts under the presidency of the respective alcaldes, and the voters elected a secretary and two tellers who could read and write. A candidate must be twenty-five years old, if single, twenty-one, if married; must have resided three years in the municipality, one year immediately preceding the election; must be able to read and write; and have a capital or trade sufficient for his subsistence. Qualifications for the franchise are not stated, but were probably the same. Voters called the names of their candidates aloud and they were recorded by the secretary; if they presented a written list, the names were read aloud by the secretary. All voted for an alcalde and two *regidores,* and, if the district contained five hundred inhabitants, a *comisario* and a *sindico procurador.* Separate tallies were kept for each office and sent at the close of the election to Austin, who in this first election had the position which thereafter belonged to the alcalde of the municipality. A week later the officers of the district elections met at San Felipe, canvassed the votes, and announced the successful candidates, sending a certified copy of the vote to the political chief, posting another in a public place, and filing the original lists in the local archive.[82]

The duties of the alcalde fell into three general classes: (1) He presided over the ayuntamiento and was its executive officer; (2) he was a primary judge, or judge of first instance, having sole jurisdiction in cases under $10, final jurisdiction acting with a representative of each of the parties to the suit in cases between

[81] *Ibid.*

[82] For the procedure here described it is necessary to read the Constitution, Arts. 51, 53, 54, 160, in Gammel, *Laws of Texas,* I, 429, 446; Decree No. 23, in *Ibid.,* 191-192; Decree No. 37, Arts. 97-108, in the *Texas Gazette* as cited in note 77 above; Governor to political chief, November 17, 1827, as in note 80; and the proceedings of the first session of the ayuntamiento of San Felipe de Austin (see below, p. 299ff).

$10 and $100, and preliminary, examining jurisdiction in all other cases;[83] (3) and he was the medium of correspondence and administration between the colony on one side and the superior department and State authorities on the other, transmitting reports and memorials from the former and promulgating and putting into effect the orders and instructions of the latter. The natural comparison that comes to mind is that of a mayor who has not given up his judicial functions to police judges, but the alcalde's part in the State administration was much more direct than that of our mayors. The duties of the *regidores* and of the *sindico procurador* are nowhere clearly defined, the various Spanish and Mexican laws concerning the ayuntamiento assuming apparently that their functions were too well known to require statement. In general the *regidores* may be compared with our aldermen or city commissioners. They served on committees and looked after various departments of municipal administration, and in the absence of the alcalde the first *regidor* (ranked according to the number of votes received at election) acted in his place. The *sindico* was described by the ayuntamiento itself as "the procurator (*personero*) of all the civil affairs of the municipality,"[84] but this hardly enables one to visualize his functions. The best that can be made of the office is that it called for a sort of combination of the duties of a notary and city attorney. In addition to the elected officers there was a sheriff (*alguacil*), appointed by the alcalde, and a secretary elected by the ayuntamiento. The fact that all official correspondence and records, including the minutes of the ayuntamiento, must be in Spanish, which few of the colonists understood, made the secretary's office an important and burdensome one.[85]

As we have seen, districts or precincts with 500 inhabitants elected a *comisario* and a *sindico*. Their term of office was one year, and while they might be re-elected, they could not be com-

[83]Decree No. 39, "for the admininstration of justice in the State of Coahuila and Texas," June 22, 1827. Printed copy in the Bexar Archives. The law is omitted in Gammel.

[84]"Municipal Ordinance for the Government and Regulation of the Ayuntamiento of Austin," enacted as Decree No. 100 by the Legislature. *Texas Gazette*, October 31, 1829. Chapter VII of Decree No. 37 is entitled, "Of the comisarios de policia and sindicos," but it describes only the duties of the *comisarios*.

[85]*Ibid.*, Chapter VI.

pelled to serve more than one year in three. They were subject to the ayuntamiento, and might attend its sessions voluntarily or on summons, having a voice but no vote in its deliberations. The duties of the *comisario* were to take the census of his precinct, keep a record of the families moving into it and of the places from which they came, assist tax collectors, execute the orders of his superiors, arrest disturbers of the peace and preserve public tranquillity, and report "idle and vicious persons" to the alcalde.[86] In addition, he was invested with minor judicial authority similar to that of the alcalde or of a justice of the peace.[87] The duties of precinct *sindico* are described merely as being the same in his sphere as those of the *sindico* of the ayuntamiento.[88]

We are fortunate in having the minutes of the ayuntamiento of San Felipe for the first four years of its existence—from February 12, 1828, to January 3, 1832[89]—and in being able to see therein the Anglo-American adapting himself to Spanish local institutions. The first returns showed Thomas M. Duke elected alcalde over Austin's candidate, Ira Ingram, by a vote of 121 to 111. Thomas Davis and Humphrey Jackson were elected *regidores* and Rawson Alley *sindico*. Austin had called attention to the necessity of frequent meetings, and urged the choice of members within convenient distance of San Felipe,[90] but Duke lived ten and Jackson thirty leagues from the capital.[91] The result could be easily foreseen. After regular meetings for less than two months the ayuntamiento adjourned to meet no more, if we are to judge from the absence of minutes, until time to canvass the next election returns in December. It performed but two acts of any consequence. One was to frame a municipal ordinance defining its own duties, functions, and rules of order, and outlining a plan of taxation for local needs; and the other was the adoption of a memorial to the Legislature to legalize labor contracts with servants whom the Constitution forbade immigrants to bring

[86]Decree No. 37, Chapter VII, as cited in note 77, above.
[87]Decree No. 23, in Gammel, *Laws of Texas*, I, 192.
[88]Decree No. 37, Art. 158.
[89]Beginning publication in this issue of THE QUARTERLY, p. 299.
[90]Austin to Bell, January 1, 1828. Austin Papers.
[91]Minutes of the ayuntamiento, March 14, 1828.

to the country as slaves.[92] The first was required by law, and was submitted to the Legislature and approved as a sort of city charter.[93] To meet municipal expenses and build a jail and town hall it levied specific property taxes on land, live stock, and slaves—ranging from $4.50 on a league of land to two cents a head on hogs,—and occupation taxes on lawyers, merchants, and keepers of "tipling shops."[94] The occupation taxes or licenses were from two to three times as high for foreigners as for citizens.

Having assessed the taxes, the ayuntamiento endeared itself to the people by taking no steps to collect them. "In fact," said Austin speaking of this body, "they did nothing on any subject that they ought to have attended to." The members were subject to fine for neglect of duty, and only Austin's intervention prevented the political chief from imposing it. "I have actually exhausted all the stock of reasonable excuses that I could devise," said Austin, "and have drawn so largely upon shadows and frivolous apologies that I am ashamed to interfere any more."[95] Nevertheless, when the next ayuntamiento showed a disposition to take its duties seriously, a storm of protest arose from the people: The colonization law specifically exempted them from taxation and the ayuntamiento therefore had no legal right to levy a tax; the order requiring them to register births and deaths in their families was an imposition; the enforcement of the vagrancy laws was tyranny; the plan to build a courthouse "for the lawyers to strut in" was inexcusable extravagance. As always it fell to Austin to quiet the rising storm with arguments compounded of homely wisdom, cajolery, and persuasion, in the use of which he was a master. Austin himself was urged to become alcalde but declined. He no longer had the patience that the office required, he said; and moreover he had "other things to attend to of much more importance to the colony than settling little neighborhood disputes about cows and calves."*

[92] *Ibid.*, March 14, April 5, 1828.

[93] Decree No. 100, in the *Texas Gazette*, October 31, 1829; omitted from official publication of the laws. See pp. 311-324.

[94] The list of taxables mentioned in the law differs somewhat from that recorded in the minutes of March 14, 1828.

[95] Austin to Bell, March 17, 1829. Austin Papers.

*Austin to Bell, April 16, 1830. Austin Papers.

A study of the minutes for the next three years shows the ayuntamiento performing the various functions of a modern city and county commission: laying off roads and supervising their construction; regulating ferries and ferriage rates; creating boards of health, boards of medical examiners, and quarantine boards; regulating weights and measures; repairing churches and public buildings; directing militia organization; holding special elections and settling election disputes; serving generally as conservator of public morals, first warning and then punishing vagrants and drunkards, enforcing the laws against gambling and other forms of vice, and closing "tipling shops" at ten o'clock. It assisted Austin in keeping the colony free of undesirables, advising when to grant and when to withhold titles to land; and relieved him of no little responsibility in deciding when titles should be forfeited for non-fulfllment of the conditions of the grant. Finally, it strove earnestly, but without success, to raise funds for the establishment of an academy at San Felipe. The problem of getting revenue for indispensable expenses remained always a most difficult one and the collections left no surplus for permanent improvements. The courthouse and jail projected by the first ayuntamiento were still unbuilt in 1832. This made the safeguarding of prisoners awaiting trial an expensive and embarrassing task, and helped to emphasize the defects in the judicial system. Another difficulty was that of keeping a competent secretary acquainted with Spanish. Samuel M. Williams served during most of the period under examination, but it was a sacrifice which he could ill afford to make, and whenever possible he withdrew from the office. During such intermissions Austin could sometimes be induced to serve; and on one occasion the ayuntamiento employed, to its subsequent regret, the Federal customs collector, George Fisher.[96] Throughout there is evidence of the closest harmony and co-operation between Austin and the ayuntamiento; he was always consulted on any matter of State or Federal relations.

Of the division of labor between the different members of the ayuntamiento the minutes give us no information. The principal employment of the alcalde was judicial, but his court records are not preserved. The general judicial system is clear, however,

[96]Minutes, October 5, 16, 18, 1830.

from a study of the Constitution and of Decree No. 39, approved June 21, 1827. These show, as we have already seen, that the alcalde had sole and final jurisdiction in petty cases both civil and criminal. This jurisdiction was purely local, and, in a way, was outside the general system. In more important cases the alcalde was the court of first instance, conducting the examining trial and sending the record to the *asesor general,* or State's attorney, at Saltillo for advice as to the verdict that he should render. Having received the *asesor's dictamen,* or opinion, he must give judgment within eight days. He was not compelled to follow the *dictamen* exactly, but, since the *asesor* was a competent lawyer, he varied from it at some risk. An appeal could be, and in cases involving corporal punishment must be, taken from the court of first instance to the first chamber of the Supreme Court, which sat at Saltillo. The Supreme Court was composed of three judges, or *ministros,* and was divided into three chambers, one judge presiding over each chamber, and associating with himself in the hearings two colleagues, chosen one each by the parties to the suit. The second chamber heard appeals from the first, but the third was not a trial court at all. It ruled on questions of jurisdiction arising in the lower courts, determined "appeals of nullity"—motions to quash or set aside verdicts of the lower courts,—had some part, not clearly defined, in appeals from ecclesiastical courts, and had certain semi-clerical functions.[97]

The opportunities for delay in such a system were very great, and its inconvenience to the Texans was enormous. Thus in any case of corporal punishment there was first an examining trial before the alcalde, the evidence was then forwarded to the *asesor general* at Saltillo, some 500 miles away, his *dictamen* was returned to the alcalde and judgment pronounced, but before it could be executed the judgment and all the documents in the case must make another trip to Saltillo to receive the approval of the Supreme Court. With the least possible delay four months were consumed in this procedure, and the normal time was from six to eight months.[98] In the meantime the prisoner was supposed to be in jail or employed on the public roads. If, as at San Felipe,

[97]Constitution of Coahuila and Texas, Title III, in Gammel, *Laws of Texas,* I, 447-450; Decree No. 39 (June 21, 1827), in Bexar Archives.

[98]Editorial in the *Texas Gazette,* August 29, 1830.

there was no jail, his safekeeping was both expensive and embarrassing.[99]

The Constitution[100] authorized the Legislature to establish as soon as possible a system providing for trained judges (*jueces de letras*) in the primary courts and trial by jury, and time after time the colonists petitioned for them,[101] but it was not until 1834 that the Legislature acted. Then it enacted[102] a plan for district and superior courts similar to that suggested by Austin to Bastrop in 1826, but before it went fully into operation the revolution brought more sweeping changes.

It remains only to speak of the election of State officers. These were chosen by indirect vote, the citizens of each municipality electing electors in August who met at the capital of the department in September and voted for governor, vice-governor, the executive council, and members of the Federal Congress and the Legislature. In Texas, where until 1832 there was only one department, the vote of this body was final in the election of members of the Legislature, but for the other offices the departmental votes had to be canvassed by the Legislature to determine the result. In case of a tie, or no majority, for the office of governor the Legislature elected from the "two or more . . . having the highest number of votes."[103] This language lacks something of clearness, but fortunately it is not essential to the object of this paper to resolve the ambiguity. Before taking their seats it was customary for the newly elected members of the Legislature to ask and receive formal instructions concerning legislation which their constituents desired.[104]

Until 1832, when the ayuntamiento of Brazoria was created, all the Anglo-American portion of Texas, except that between the Sabine and the San Jacinto, was subject to the jurisdiction first

[99]See, for example, Austin to Musquiz, November 30, 1830. Austin Papers, miscellaneous (Blotter in June file).

[100]Arts. 92 and 93.

[101]For example, minutes of the ayuntamiento, November 30, 1830; resolutions of a convention at San Felipe, June 12, 1832 (Translations from Bexar Archives, Texas State Library).

[102]Decree No. 277, April 24, 1834, Gammel, *Laws of Texas*, I, 364-384.

[103]Constitution, Art. 134.

[104]See, for example, requests for such instructions in Sambrano to Austin, May 10, 1824, Austin Papers; and Austin to ayuntamiento of Nacogdoches, September 18, 1830, Nacogdoches Archives (Texas State Library).

of Austin and then of the ayuntamiento of San Felipe. The machinery of local government in frontier societies is likely under the most favorable conditions to work jerkily, with much grumbling and protesting, reflecting the characteristics of the community. The normal "North American frontier republican" is impatient of the restraints and formalities of law; and here the natural difficulties of local administration were aggravated by the obstacle of language and the colonist's inability to inform himself of the laws. It, nevertheless, seems plain from the documents that actual government in Austin's colony conformed with noteworthy fidelity to the Constitution and the laws. Perhaps this was due in part to the fact that in its essentials the system did not differ greatly from that with which the colonists were already familiar, but it was also due in no small measure to Austin's powerful influence and unremitting oversight. "Upon the whole," wrote a recent settler from Missouri in 1832, "I beleave we get along full as well as the inhabitants of territories in the United States, beleave the laws here are as well administered as they are in Arkansas and perhaps better, and equally as well as they were when I first went to Missouri."[105]

[105]J. F. Perry to Grady, July 12, 1832. Austin Papers.

THE RESIDENCIA IN THE SPANISH COLONIES

CHARLES H. CUNNINGHAM

The residencia was a judicial examination held, or an account given of the official acts of an executive or judicial functionary during the term of his incumbency. It was a trial held at the expiration of the term of office of the person concerned, or, in case of malfeasance, at any time.[1] It was utilized by the Spaniards through three hundred years of their rule in every province and colony in America. It was the means by which Columbus was deprived of power and sent home in disgrace on his third voyage, it was reserved for the conquerors of Mexico and Peru, and for every other official of consequence who followed them. It was notable not only for its universality, but for its ineffectiveness, and for the persistence with which the institution was retained, when repeatedly shown and universally known to be ineffective.

The principle underlying the residencia was bequeathed to the Spaniards by the Romans, being similar to, and perhaps derived from, their law which gave the right of accusation to any Roman citizen against an office-holder. It combined the features of a general survey of the official career of the individual under investigation, an auditing of his financial operations, if he handled government funds, and a general trial. Its purpose was to ascertain

[1]Special emphasis should be placed upon the last clause of the above definition. The periodical residencia was not the sole means for the removal of officials in the Spanish colonies. The conclusion seems to have been reached by many historians that officials were permitted to conduct themselves carelessly, running their offices to suit their own personal convenience from the date of their appointment, in the assurance that their tenure was sure until the termination of a specified term, and that the periodical residencia was the only occasion on which they might be held to answer for their sins. Only the most scant attention has been given by modern writers to the residencia. Helps, in the most unsatisfying and uncertain of his chapters on Spanish colonial institutions, traces the residencia from the *Theodosian Code* and the *Fuero Juzgo*. (Helps, *The Spanish Conquest in America*, III, 148-158.) He is more than usually conjectural and theoretical in his treatment of the subject. See also the brief references in Bancroft, *History of Central America*, I, 250-251, Vander Linden, *Histoire*, 349, Moses, *Establishment of Spanish Rule in America*, 172, and Priestley, *José de Gálvez*, 96-99. The latter author contrasts the residencia, *pesquisa* and the visitation.

whether he had executed his duties faithfully, and it served to clear him if he were proved honest, giving him a clean certificate of recommendation. It proceeded on the principle that he was guilty until proved honest. If he were shown to be guilty of breach of trust, official misconduct or dishonesty, he was apprehended, degraded and punished, supposedly according to his deserts.[2]

It is the purpose of this paper to illustrate the general features of the residencia in the Spanish colonies by concrete cases drawn from the history of the Philippines. An exhaustive review of the subject, illustrating or discussing residencias in all the colonies of the Spanish empire, would be quite beside the point. It is assumed that conditions in the Philippines were sufficiently characteristic of all the colonies of the Spanish colonial empire to make this study of general illustrative value. The same laws were applied there and the same practices followed there as elsewhere. The laws of the Indies were equally in force there, and appeals from the Philippines were entertained in the Council of the Indies as from all other colonies.

It is important to note not only that an investigation was conducted at the close of the official term, but that one might be held at any time during the period of service. The term *pesquisa* was applied to that form of investigation which was carried on by a special investigator or *pesquisidor,* who was sent when serious charges were made against the conduct of an official, and before his term had expired. The distinguishing feature of the *pesquisa,* as prescribed by the laws, was secrecy, but as an actual fact few if any were carried out secretly. On receipt of charges

[2]Bourne, in his *Historical Introduction* (Blair and Robertson, I, 51-52), characterizes the residencia as follows: "It was an institution peculiar in modern times to the Spanish colonial system. It was designed to provide a method by which officials could be held to strict accountability for all acts during their terms of office. . . . To allow a contest in the court involving the Governor's powers during his term of office would be subversive of his authority. He was then to be kept in bounds by realizing that a day of judgment was impending, when every one, even the poorest Indian, might in perfect security bring forward his accusation. In the Philippines the residencia for a Governor lasted six months and was conducted by his successor, and all the charges made were forwarded to Spain. . . . The Italian traveler Gemelli Careri, who visited Manila in 1696, characterizes the Governor's residencia as a 'dreadful trial,' the strain of which would sometimes 'break their hearts.'"

or other evidence of the criminal proceedings of an official, a *pesquisidor* would be dispatched by the Council of the Indies or by the local audiencia, according to the rank and position of the offender. Obviously the arrival of a magistrate in a colonial or provincial capital could not be kept a secret, and frequently advance information of his coming was sent ahead. After a preliminary investigation by the visiting magistrate, the offending official might be suspended from office, preparatory to his formal trial, or, if sufficient evidence were not forthcoming, the investigator would return whence he came to make a report, favorable or unfavorable, as the case might be. Usually, if nothing more than this were done, the matter was dropped, and the official under investigation was allowed to continue in office. If he were suspended from office, he would remain under arrest, or, as Helps suggests (III, 146), practically under impeachment. Regular residencia proceedings would then be instituted, and as a result the defendant might be cleared, or he might be fined only, or, if criminal offenses were proved, he might be removed from office and penalties imposed in accordance with the criminal code. Appeals might be made from the judge of residencia (either the *pesquisidor* or another judge not connected with the preliminary investigation, but usually the former) to the audiencia of the district or to the Council of the Indies. In fact, original judgment was always reviewed in the audiencia, unless the investigating judge were especially commissioned by a higher authority,—for instance, the Council of the Indies.

The faculty of determining whether or not cases merited investigation belonged to the *acuerdo* of the audiencia and governor (or viceroy in Mexico or Peru), while the designation of the judge was the function of the executive.[3] The judges sent on these missions of residencia were not at first authorized to render definitive sentences, but that power was conferred upon them by the

[3] *Recopilación de Leyes de Indias*, 5-5-21 (Book 5, Title 5, Law 21). The *acuerdo* was a meeting or conference between the governor, viceroy, or captain-general and the audiencia. The determination or decision of this meeting was also termed an *acuerdo*. It transpired that the *acuerdo* came to be of great importance and frequently the audiencia went so far as actually to legislate in these meetings, sometimes with the consent of the executive, sometimes without it and against his judgment.

law of 1576.[4] Appeals might be made to the audiencia in case the fine exceeded two hundred ducats. If it involved the death penalty, permanent deprivation of office, or a monetary consideration exceeding two thousand pesos, a case could, prior to 1799, be appealed to the Council of the Indies. After that time only the residencias of governors, viceroys, *oidores* and superintendents could be tried in the Council, and they were resolved there in first instance.[5]

A typical instance of the sort of investigation referred to above may be noted in the case of Antonio Pimentel, governor of the Mariana Islands, whose residencia was taken in the decade following 1711. There may be noted in this case, especially, the distinction between the formal residencia, conducted at the close of the regular term of office, and an investigation of charges brought during the incumbency of an official. This case illustrates both forms of investigation, for it originated in a charge of treason against Pimentel, who, it is said, had furnished food and water to the crews of two English vessels, enemies of Spain, and these same ships had afterwards captured the galleon *Nuestra Señora de la Encarnación,* en route from Manila to Acapulco. The conduct of the case was given to Magistrate Torralba, of the Manila audiencia. Notwithstanding his plea of ignorance that a state of war existed between Spain and England, Pimentel was sentenced to the forfeiture of the bonds which he had posted on assuming office, and, in addition, was deprived of his post as governor. This sentence was rendered July 24, 1714.[6] The tribunal sentenced Pimental to prison, and ordered that his residencia be taken; accordingly, an examination was made of all his official acts in the office which he had held. Pimentel, therefore, not only had to stand investigation for the particular offense which had brought about his removal, but he was also subjected to residencia over his entire career as governor. It may be noted that the two forms of investigation were separate and distinct on this occasion.

Owing to the death of Governor Lizarraga, the imprisonment

[4] *Ibid.*, 7-1-14.

[5] *Ibid.*, 5-12-31.

[6] *Expedientes relativos á la residencia de Don Antonio Pimentel, gobernador de las Marianas, Archivo de Indias,* 68-4-17 and 18.

of Oidor Villa, and the state of anarchy surrounding the administration of Oidor Torralba as temporary governor, Pimentel was forced to languish in prison several years while he awaited the formal residencia. Luís de Tagle was appointed as his successor, and judge of residencia on June 25, 1717.[7] A letter of the audiencia, dated August 9, 1718, advised the governor that there were four hundred and twenty-seven unfinished cases on the docket of the tribunal, and chief among those which ought to be finished without delay was the review of the residencia of Pimental. It was added that there seemed to be no prospect that a boat could get to Guam before 1719. The record of the termination of this suit probably reposes somewhere in the archives of Spain, tied in an aged, yellow packet, bound by red tape.

Practically all of the colonial officials were subject to residencia. The most sensational and widely known were those of the viceroys and captains-general, but *oidores,* treasury officials *encomenderos, alcaldes mayores* and *corregidores,*[8] admirals, generals, captains and constructors of galleons were likewise examined in this way.[9] Clerks, notaries, secretaries, *alcaldes ordinarios,*[10] *regidores* and other officials of a minor category were investigated at the same time when a governor or viceroy was examined. The residencia of these dependents seems to have become more and more perfunctory as time passed and there was a tendency during the latter part of the eighteenth century to continue them in office, even without investigation. When, for example, Governors Basco

[7]This occasion was one on which the successor of a governor actually took his predecessor's residencia, owing, the commission said, to the distance and the irregularity of communication between Manila and Guam.

[8]*Recopilación,* 2-31-1. *Encomenderos* were persons holding lands and Indians, for a limited time, either as a reward of merit or as a business proposition, farming the lands or utilizing the mines on them, usually paying a stipulated revenue or rent to the government. See Montero Y Vidal, *Historia de Filipinas,* I, 42-43; Pardo de Tavera, *Philippine Census,* I, 330; *Recopilación,* 9-8, 9, 11; Helps, *Spanish Conquest,* I, 102 *et seq. Alcaldes mayores* and *corregidores* were provincial governors with executive and judicial powers.—Bancroft, *History of Central America,* I, 297; *History of Mexico,* III, 520, II, 329-330; Relation by Loarca, Blair and Robertson, I, 35-187.

[9]*Recopilación,* 5-15-17 to 18; 9-45-42.

[10]*Alcaldes ordinarios* were municipal judges and, usually, at the same time members of the municipal council (*cabildo or ayuntamiento*); *regidores* were members of the latter body without judicial powers.

y Vargas and Marquina gave up office this formality was omitted.[11] The practice of taking the residencia of the last group of officials was definitely abandoned on August 24, 1799, and a rigid inspection of their official acts by the audiencia was substituted.[12]

Officials were usually obliged to submit to residencia before leaving the colony and before their promotion to other posts.[13] In the Philippines, however, owing to the paucity of ships plying to New Spain and the length of time elapsing between the sailing dates, officials could post bonds and leave before the residencia was completed. This was permitted only to men of good character, whose services had been uniformly satisfactory, destined to some other post wherein their services were indispensable. The investigation was then conducted in the absence of the official concerned.[14]

It was decreed by the *cédula* of December 30, 1776, that an annual deduction should be made from the salaries of governors and viceroys until sufficient money had been taken out to cover the probable costs and liabilities of their residencia.[15] This was a special assessment, distinct from the *media anata* (which was a sort of an income tax), and the money deducted thereby was to be returned if nothing detrimental was proved in the residencia. The last year's salaries of *alcaldes mayors* and *corregidores* were witheld, pending investigation of their official conduct and a rendering of accounts of collections made by them.[16] If an official were cleared of all guilt, the money which had been withheld was refunded, and the costs of the residencia were defrayed from the royal treasury.[17] In case the official were found guilty of misconduct, he had to forfeit his deposits, back salary,

[11]Having been excused by the *cédulas* of July 7, 1789, and January 15, 1795; A. I., 105-2-5.

[12]*Recopilación*, 5-15, notes 4, 11.

[13]*Ibid.*, 3-2-6. There were two kinds of bonds, those posted at the beginning of the term of office, and special bonds of residencia, given at the time of that investigation. The last mentioned were not required if the office were not a responsible one or if the charges were not sufficiently serious.

[14]*Ibid.*, 5-15-3; this *cédula* was annulled by that of May 21, 1787; see note to Law 3, same title.

[15]King to Basco y Vargas, A. I., 107-5-20.

[16]*Recopilación*, 8-26-42.

[17]*Ibid.*, 5-15-42.

bonds, and frequently he had to pay a large fine in addition. The amount of the penalty, of course, depended on the extent of the guilt. It may be said that in the Philippines the royal treasury suffered no serious embarrassment through having to bear the costs of residencia.

The judges of residencia who served as such in addition to their regular duties received an additional compensation which varied according to the place where the residencia was held, its distance from the capital and other circumstances.[18] This was modified by a reform of the nineteenth century which awarded extra pay only in case the official were fined. This was intended, of course, to afford the examining judge a stimulating interest in the case. Still later the system of giving extra pay for the residencia was abolished.

Much contradictory legislation appears in the laws of the Indies in regulation of the method of taking residencias.[19] This, of course, is because reforms were promulgated from time to time. We must remember that these laws were made for a growing empire. A chronological review of the laws referred to will show that the residencia was at first more or less an experiment. Indeed, the fact is too often overlooked that all the colonial institutions were in the early periods passing through experimental stages, and that the seemingly contradictory laws were enunciated and repealed in turn, according to the success or failure of the measures which were put into effect.

In illustration of the above characteristic of the laws of the Indies, we may note the *cédula* of December 4, 1630, which ordered that the residencia of a governor should be taken by his successor. This law was seldom, if ever, observed. Owing to the distance from Spain and Mexico, the time consumed in voyages, the unhealthy climate and the dangerous military campaigns in which the governors were compelled to engage, death frequently

[18] *Ibid.*, note 2.

[19] Sinibaldo de Mas, the able Philippine critic of the nineteenth century, says in regard to the above characteristic of the *Recopilación* and its laws, "since the laws of the Indies are not a constitutional code, but a compilation made in 1754 (a footnote amends this statement with the correction that the *Recopilación* was first made in 1681) of royal orders, dispatched at various epochs and by distinct monarchs . . . there results . . . a confusion of jurisdiction." De Mas, Blair and Robertson, LII, 70.

intervened before their successors could arrive. This, of course, did not prevent the residencia from being taken. These conditions, the same as prevailed in all of Spain's colonies, caused the above law to be modified by the *cédula* of November 28, 1667, according to which judges for the residencias of viceroys and presidents (governors and captains-general) were to be delegated by the king. The magistrate named was usually the senior magistrate of the audiencia. After 1776, the regent almost invariably conducted these investigations. The important reform of August 24, 1799, ordered that judges of residencia for governors, viceroys, presidents, governors-intendant, *intendentes-corregidores* and presidents of the Council of the Indies should be appointed by the king.[20]

The first residencia to be conducted by the Philippines in accordance with the law of November 28, 1667, was that of Governor Salcedo in 1670. This governor had been removed by the commissioner of the Inquisition on June 30, 1668, and Francisco Coloma, the senior magistrate of the audiencia, was ordered to take his residencia.[21] Coloma's intervention in the matter was protested by the audiencia in a letter to the Council of the Indies, dated April 7, 1670, on the grounds that Coloma was also the *asesor*[22] and possible successor of the governor, and for that reason was legally incapacitated to take the latter's residencia.[23]

The audiencia at the same time suspended the proposed action of Coloma, pending the reply of the Council of the Indies. In addition to the protest of the audiencia, the *fiscal,* on May 20,

[20]*Cédula* of August 24, 1799, San Pedro, *Legislación Ultramarina,* III, 280-281.

[21]*Papeles relativos á la residencia del gobernador Salcedo, Inventario de Residencias,* A. I.; also A. I., 67-6-10.

[22]Since all legal advice was furnished the governor by his *asesor,* Coloma would be examining his own acts.

[23]The *fiscal* was the general prosecuting official; the asesor was the legal advisor of the governor, since the latter was usually a military official and knew nothing of legal matters. The *asesor* was held responsible for the legal and political decisions of the governor and the resultant consequences of the same. The *fiscal* gave legal advice to the audiencia, and in fact, to all other officials of the government, even including the governor at times. There were many bitter disagreements between the *fiscales* and the governor's *asesores.* In some provinces there were *tenientes asesores* or *tenientes-letrados* to advise the *alcaldes mayores* and *corregidores* in legal matters.

1670, sent a report of the case to the court.[24] The notes from Manila were effective in bringing about the desired results. Upon receipt of the communication, the Council of the Indies, on June 17, 1671, ordered the nullification of all former *cédulas* and cancelled Coloma's appointment to take the residencia in question, on the grounds that he had been the governor's *asesor*. Francisco de Montmayor, the *oidor* next in rank, was appointed to conduct the residencia of the governor.[25] Salcedo had already been dead three years, and two more transpired before his residencia was completed and the *autos* thereof reviewed by the Council.

During the first two centuries of Spanish rule in the Philippines the residencias of the governors were especially stringent, many of these officials suffering deprivation of office, imprisonment and exile. The families and dependents of some were reduced to the last extremes of poverty, while the victims themselves spent years in distant provinces, unable to defend themselves from their enemies. Many victims of residencia were purposely put aside in order that no appeal could be heard from them. One would occasionally find relief at last in a tardy pardon or in a modification of sentence, obtained through the influence of friends at home, when these latter could be reached, but more often death would intervene before the exercise of executive clemency or revision of sentence could be obtaind.

The factors of petty spite, malice and personal ambition entered to an extensive degree in the rendering of testimony at a residencia. The governor, recently arrived in the colony, would be full of zeal and ardor to inaugurate a successful administration and make a good record for himself. The first duty that presented itself on his arrival was that of taking or supervising his predecessor's residencia. Frequently, before arriving at Manila, the new governor would be in full possession of a complete record of the misdeeds of his predecessor, and the residencia of the latter was a good as taken.[26] *Oidores,* merchants, *alcaldes,* treasury offi-

[24] *Recopilación,* 2-18-27

[25] *Cédula* of June 17, 1671, *A. I.,* 67-6-10.

[26] Officials, desirous of ingratiating themselves into the favor of the new executive, frequently journeyed by land and sea from Manila as far as the Straits of San Bernardino. The privilege of returning to Manila in company with the new governor was then gained, together with the oppor-

cials and churchmen, compelled to stand aside for a long period, to see a governor take his choice out of the best things and leave for them only the husks, were not slow in bringing charges at the official residencia.[27] A new governor, desirous of demonstrating his intention of starting an honest and vigorous administration, hearing nothing but evil of his predecessor, would naturally lend himself as an instrument of the desires of all malcontents. A *fiscal,* after spending six years in conflict with a governor, could be depended on to bring strenuous prosecution against him. A magistrate with enmity in his heart for the governor whose residencia he was to take, was no fit person to conduct an impartial investigation.

While, as a rule, the residencias of governors were arduous, due largely to the presence and hostility of the audiencia, that of Dr. Sande, the first governor to submit to this investigation in the Philippines, illustrates the evils of the residencia as conducted before the establishment of the audiencia. His successor, Governor Ronquillo de Peñalosa, conducted his residencia and sentenced him to pay a heavy fine, but he appealed the case to the Audiencia of Mexico, in which tribunal, meanwhile, he had been commissioned *oidor.* Ronquillo commented in no uncertain terms on the abject state into which the administration of justice had

tunity to poison his mind with tales and insinuations of the misdeeds of the incumbent and of the wealth which the latter had heaped up for himself through the exercise of dishonest methods.

[27]The residencia of a governor presented a splendid opportunity to that official's enemies for revenge. A governor was always in a fair way to make enemies, and the latter usually awaited the residencia of their former oppressor with great eagerness. In case a governor did make fair profit out of his office, and there were many opportunities for profit, commercial and otherwise, legitimate and illegitimate (according to Zúñiga, *Estadismo,* I, 242, the emoluments of the governor, aside from his salary, aggregated 20,000 pesos a year), his enemies gave him no rest at the time of his residencia. It is probable that most of the governors were dishonest, as the opportunities for corruption were numerous. The temptations offered by the position were too strong for the powers of resistance of any human being. Thousands of miles from Spain, in an age of slow communication, entrusted with the assignment of all sorts of lucrative offices, *encomiendas* and commercial privileges, with friends, relatives and special interests to serve, a governor was surrounded by countless officials who were eagerly awaiting their share of booty, and who were ready at a moment's notice to turn traitor if they could gain by such an act. It may be said of the Spanish colonial governor as was said of Verres of old, that in stealing one must steal threefold, once for himself, once for his judge and once to pay the penalty.

fallen when a man could be promoted to a magistracy in a tribunal which was trying his own case on appeal.[28] However, after the establishment of the audiencia and until the close of the nineteenth century, the residencia went to the other extreme, and was, as a rule, extremely rigorous.

The residencias of subsequent governors were conducted in due form, however, as the defects referred to by Ronquillo were eliminated by the establishment of the audiencia. Thereafter, the magistrates conducted these investigations under the supervision of the new governor. An account of the residencias of all the governors of the Philippines and a statement of the fines imposed upon them would not necessarily subserve the purpose of this paper, which is designed to show the aims and methods of the investigation rather than to give a detailed account of what transpired. We may note, however, a few of the more typical ones which illustrate some characteristic or phase of the residencia.

Santiago de Vera, governor from 1584 to 1590, whose administration had been one perpetual struggle with the ecclesiastical authorities, was obliged to submit to a very rigorous audiencia. His chief accuser was his enemy, Bishop Salazar. Nevertheless, Vera was cleared and promoted to Mexico. Gómez Pérez and Luís Pérez Dasmariñas, successors of Vera and governors during the period when the colony was without an audiencia (1589-1596), were obliged to give residencia to Governor Tello in 1596.[29] The younger Dasmariñas was sentenced to a fine of more than 50,000 pesos.

Neither the death of Governor Tello in 1603, in office, nor that of Pedro Bravo de Acuña, in 1606, soon after the latter's return from a successful expedition to the Moluccas, excused those governors from the investigation, even though they were not personally present to answer for their misdeeds. They had both accumulated considerable property during their administrations through commercial ventures and, as a result, particularly of their favoritism to the Chinese, all their property was confiscated by the audiencia. The residencia of Acuña was taken and heavy penal-

[28]Ronquillo to King, June 15, 1582, Blair and Robertson, IV, 310-311.

[29]Gómez Pérez Dasmariñas died in 1593 and was succeeded as governor by his nephew Luís Pérez Dasmariñas; the latter was obliged to give residencia for his own and his uncle's administration.

ties were imposed upon his estate by Rodrigo de Vívero, who had been sent by the Viceroy of New Spain in 1608 to assume temporary charge of the government and to conduct the residencias of officials in the colony.

In 1625 Gerónimo de Silva, temporary governor, was imprisoned by the audiencia because he had failed to pursue the Dutch after their failure to take Manila in 1610. The real difficulty lay in the fact that Silva had incurred the enmity of the senior magistrate, who ultimately conducted the residencia. Silva's arrival in the Islands had deprived that magistrate of the command of the military and naval forces of the Islands.

Governor Corcuera, after nine years of successful rule, during which he distinguished himself in several campaigns of conquest, and incidentally aroused the hostility and jealousy of the *oidores,* was arrested on charges made by the audiencia on the arrival of Governor Diego Fajardo in 1644. An *oidor,* who was the personal enemy of Corcuera, was designated to conduct the residencia. The ex-governor was fined 25,000 pesos and was imprisoned five years while the magistrate of the audiencia delayed the transmission of the papers which would have permitted a rehearing of the case. At last his defense was sent to the Council, the fine was remitted, he was given salary for the period of his exile, and the post of governor of the Canaries was conferred upon him. Although the audiencia was responsible for the injustice in this case, Fajardo, as president and governor, was held answerable in his residencia for his conduct toward his predecessor.

Governor Lara, a placid and mild executive who terminated a successful administration in 1663, was forced to submit to a severe residencia on giving up his office, and was fined 70,000 pesos. He appealed to the Council of the Indies and the sentence was remitted.[30] We have already noted the residencia of Governor Salcedo in 1670. Governor Juan de Vargas Hurtado, incumbent from 1678 to 1684, was compelled to give an uncommonly hard residencia which lasted over four years, the trials of which so weakened him that he died at sea in 1690, en route to New Spain. His chief crime had been his opposition to Archbishop Pardo, and his accusers in the residencia were ecclesiastics. Governor

[30]Zúñiga, *History* (English edition), I, 304; Montero y Vidal, *Historia,* I, 330-331.

Zabalburú, after eight years of distinguished service, was dismissed in 1709 for having received the French papal delegate, Tourón, in the Islands. The latter had been commissioned by the Pope, but had come without the authorization of the Council of the Indies. After his residencia had been taken, new charges were brought by the *fiscal,* and it was proved that he had been guilty of favoritism in the bestowal of a contract for the careening of the galleon. He was fined 11,000 pesos, which was the sum lost to the government through his act.[31]

Governor Bustamante was murdered in 1719. His successor, Governor Torre Campo, who came to the Islands in 1721, was ordered to investigate the cause of his death, but owing to the influence of the Jesuits, who seemed to have been responsible for the death of Bustamante, the matter was delayed. The government at Madrid was compelled to take the matter in hand, and, as a result, the governor finally made a noncommittal report, accusing nobody. The property of Bustamante was sequestrated on his death, but the circumstances of his murder were so revolting that his case was not prosecuted, and the remaining portion of his property was sent to New Spain to his family.[32]

When Governor Váldez y Tamón came to give residencia on the termination of his administration in 1739, he was charged by the *fiscal* with having made away with 2,500,000 pesos belonging to the government. It was not proved. It is unbelievable that any governor of the Philippines ever had a chance to appropriate that much money. Governor Obando, whose administration from 1750 to 1754 was a perpetual struggle with the audiencia and the archbishop, was severely treated by the residencia, which was conducted by his enemies, the *oidores.* Governor Arandía, who was said to have amassed a fortune of 250,000 pesos during his adminstration from 1754 to 1759, leaving his wealth to pious purposes on his death, was fined 6,713 pesos in his residencia.[33] Governor Raón, who had failed to properly execute the royal orders relative to the expulsion of the Jesuits and the Chinese from the Philippines, was heavily fined, his property was seized, and

[31]Torralba to King, June 23, 1716, *A. I.*, 68-4-18.
[32]*Inventario de residencias, A. I.*
[33]*Ibid.*

his family was reduced apparently to poverty.[34] From one account we learn, however, that Raón left to his family the sum of 500,000 pesos, all of which he obtained from the Chinese, from the merchants of Manila, and from the Jesuits for various favors.[35]

Governor Simón Anda y Salazar, one of the most successful governors the Islands have ever known, was made to suffer from the personal malice of the *oidores* when he gave his last residencia in 1776.[36] Among the offenses which were proved against him was the exercise of prejudice in the residencia of Oidor Villacorta, which was conducted under his supervision. The residencia had been rigorous, due no doubt to personal enmity existing between the *oidor* and the governor, extending over a period of many years. Governor Anda was fined 4,000 pesos as a price for his excessive zeal in the prosecution of the residencia of his predecessor, Raón, who had friends in the audiencia to defend and champion his memory. Anda was also shown to have absolved certain officials of *real hacienda* (finance), permitting them to leave the Islands without the consent of the audiencia and before their obligations to the government had been settled. These and other charges were proved against him, and they were said to have caused his premature death in 1776.

Governor José Basco y Vargas, another very efficient executive,[37] but one who had been opposed throughout his administration by the audiencia, was heavily fined in 1787 by the *oidor* designated to conduct the investigation. The decision of the judge of residencia was reversed by the Council of the Indies, and Vargas' exceptional merits were recognized to the extent of his being appointed to the governorship of Cartagena, with the rank of rear-admiral. In taking the residencia of Vargas the audiencia

[34]*Ibid.* Also Montero y Vidal, *Historia*, II, 254-255.

[35]Anda to Manuel de Roda (no date), *A. I.*, 106-4-22.

[36]Montero y Vidal, II, 257-258. Anda spent an earlier term of service in the Philippines. He first came to the islands in 1761 as *oidor*. He conducted the defense of Manila in 1763, acting as temporary governor, and was accordingly obliged to submit to residencia on giving up his office in 1764. His conduct was approved, and he received high honor and promotion at the court, being advanced to membership in the Council of Castile.

[37]Basco y Vargas occupies much the same position in the history of the Philippines as does Josef de Gálvez in that of New Spain. It was he who recommended and inaugurated in the Philippines the reforms of the intendancy in 1785-7.

disagreed so completely that the tribunal was obliged to resort to the exceptional extreme of appointing a churchman as arbiter.[38] Fray Gerónimo Caraballo, the curate of Quiapo, was designated for that duty.

Aside from the above references to notable cases of governors' residencias in the Philippines, it would seem appropriate to make a detailed study of at least one governor's residencia, in order to note the method and actual practices connected with one of these investigations. We may select for this purpose the residencia of Felix Beringuer Marquina, which was the last to be conducted under the old laws, and accordingly the last of the severe residencias.[39]

As governor and superintendent of *real hacienda,* Marquina had assumed such power as probably no other governor of the Philippines ever exercised. He was opposed at every turn by the audiencia, and probably no governor had so many of his measures vetoed or opposed by the home government as did Marquina. The *fiscal* and *oidores* brought many charges against him during his administration, and these finally culminated in the royal order of February 19, 1792, before the expiration of his term, for the taking of his residencia. The regent, Agustín de Amparán, was put in possession of the special charges which had been made against the governor. According to these he had been careless in defending the Islands against the Moros; the latter had raided, insulted and robbed the settlements throughout the Islands with impunity, and no effort had been made to check their advance. The governor had transgressed in numerous instances upon the sphere of the audiencia and had substituted his own authority for that of the tribunal. He was said to have been guilty of immoral relations with certain Spanish women of the colony, having deliberately and maliciously separated an intendant from his wife

[38] *Inventario de residencias, op. cit.*

[39] This residencia was held in accordance with the laws which had prevailed throughout the seventeenth and eighteenth centuries. Characteristic of them, particularly, was the fact that the regent, or some other colonial magistrate, conducted the investigation and rendered sentence. The latter might be appealed to the Council of the Indies. This gave an opportunity for great injustice to be done to the governor by his enemies, and it did not give him an impartial hearing. The laws of 1799 still permitted a local magistrate to collect the evidence, but the decision was rendered by the Council of the Indies.

on one occasion by ordering the former to a post of duty where no woman could go. He had amassed a great fortune through trade and by diverting the proceeds of the royal revenue to his own private advantage; he had permitted merchants to conduct business without proper licenses; he had allowed foreign traders to remain and thrive in Manila under conditions forbidden by law.[40] These and many other accusations were brought against Governor Marquina in his residencia. They may be considered as typical of those usually brought against governors on such occasions.

Amparán was ordered by his commission to have Marquina retire to some spot outside Manila, where he could not interfere with the residencia, but whence he could be summoned at any time to give testimony in his own behalf.[41] The regent was instructed to ascertain of the treasury officials whether it would be necessary for Marquina to post more than the usual amount of bonds in view of the grave charges made against him.[42] In pursuance of these arrangements, Marquina was relieved of his office in September, 1792, and was sent to Laguna de Bay, about thirty miles from Manila. After five months' delay, the investigation was begun and it was concluded by July 22, 1793. However, Aguilar, the new governor, intervened and suspended the sentence on the grounds that Marquina had not been given sufficient opportunity to defend himself. Up to this time Marquina had not testified directly. Aguilar ordered that the ex-governor should be brought to Manila and that a lawyer should be appointed for his defense. This was done and the charges which had been made against him were duly answered. This evidence could not be incorporated into the official papers of residencia, however, for the latter had been finished and closed by the regent. Marquina's testimony was forwarded to Spain under separate cover.[43]

[40]Audiencia to King, June 28, 1791, *A. I.*, 108-4-18.

[41]Instructions to Amparán, February 19, 1792, *A. I.*, 105-2-10.

[42]It seems that the law, already cited, which had required an annual deduction of one-fifth of the governor's salary to cover residencia, had been abrogated by the royal order of February 13, 1782; hence there was some apprehension lest Marquina had not deposited sufficient money.

[43]The just and honorable conduct of Marquina's successor on this occasion may be contrasted with that of his predecessors, whose unfairness, bigotry and stupidity had caused governors Corcuera, Silva and Torralba, victims

The *autos* of Marquina's residencia, as formulated by the regent of the audiencia, arrived before the Council of the Indies in due time, together with Marquina's defense, which had been sent separately. The glaring injustice of the investigation as conducted by Amparán and of the official evidence transmitted was evident at once to the *fiscal* of the Council. He refused to receive any testimony that was not incorporated into the official papers of the case. Marquina was allowed a retrial by the Council. This resulted in a further delay of three years, during all of which, except for the time he spent in Manila giving testimony in his second residencia, which was taken under the supervision of Governor Aguilar, Marquina remained in the province. Shortly after his second trial Marquina was transferred to Mexico, but he was obliged to deposit an additional 50,000 pesos before his departure from Manila.

In the ultimate judgment, Marquina was pronounced guilty of many offenses in addition to those mentioned in the charges outlined in a former paragraph. He had shown favoritism in the dispensation of official favors; he had authorized the expenditure of public money for private purposes; he had neglected defense and agriculture; he had been careless in the supervision of the various departments of *real hacienda* and particularly of tobacco. He had infringed on the jurisdiction of the royal audiencia. He had indulged in private trade and had granted special favors to foreign merchants.[44] The regent fined him 40,000 pesos outright and condenmed him to pay into the royal treasury an additional sum of 16,000 pesos to cover certain illegitimate profits which he had made through granting unlawful trading concessions to an Armenian merchant. This sentence was not executed immediately, as it had to be confirmed by the Council of the Indies. On

of residencia, to be seized, imprisoned and exiled without opportunities for defense, while their investigations were being conducted. This case serves well to illustrate the fact that by the close of the eighteenth century the residencia had grown more humane.

[44]He was charged with having entered into a conspiracy with an Armenian merchant to secure trade which should have gone to Spanish merchants. In this particular venture he had made profits of 16,000 pesos and in doing so not only had he violated the laws of the Indies which forbade governors to trade (*Recopilación*, 2-16-54, 62), but he had connived at the infraction of another law which forbade foreigners to trade (*Ibid.*, 6-15-91).

review of the findings and recommendations of the regent, the Council declared that since the proceedings at the trial of Marquina had been irregular and the governor had been greatly inconvenienced already by the slow process of the courts, the fine imposed by the judge of residencia in Manila should be reduced to 2,000 pesos. Marquina, writing from Mexico, asked to have the fine remitted, but the Council denied his petition, declaring that he had been treated with great consideration and mercy already and that nothing more could be done in his behalf, especially since he had not been adjudged innocent of the charges made against him.[45]

Marquina's trial illustrates all of the characteristics, delays, terrors and ramifications of a typical governor's residencia in the seventeenth and eighteenth centuries. Continual complaints against him caused Marquina's residencia to be taken before the expiration of his official term. The regent of the audiencia was commissioned by the court to conduct the investigation (because Marquina's successor had not arrived). That magistrate was prejudiced on account of his having witnessed the governor's continual malfeasance in office. He was unable to conduct an impartial investigation, nor would the audiencia, likewise prejudiced, intervene in behalf of the ex-governor. The wrongs done to Marquina in his trial were so patent that the Council of the Indies ordered a new hearing. A severe sentence was finally passed by the judge in Manila, but it was modified by the Council of the Indies through considerations of mercy. The residencia occupied ten years, and during the greater part of that time the ex-governor remained in exile, a victim of his own misdeeds, the faulty residencia system and the hostility of the audiencia. The customary severity of the residencia was only mitigated in this case by the presence of an impartial governor, who, unlike most governors, sought to secure a fair trial for his predecessor. To accomplish this, he was obliged to work in opposition to, rather than in cooperation with, the audiencia.

The above-described method of conducting the residencia of

[45]It is an interesting commentary on the Spanish governmental point of view that, notwithstanding Marquina's misgovernment in the Philippines, he was promoted to the post of Viceroy of New Spain, which place he held from 1800 to 1803.

governors, presidents, viceroys and superintendents was modified, as already mentioned, by the reform of August 24, 1799. The new law provided that the court, instead of the new governor, should appoint the examining judge. The latter was no longer endowed with authority to pass sentence, but was ordered to remit the *autos* of the case to the Council of the Indies for final determination and sentence.[46] Again, on March 16, 1797, the royal order of December 30, 1777, was re-enacted and the practice was revived of deducting annually one-fifth of the salaries of officials whose incomes were 8,000 pesos a year or more.[47] This law was again promulgated on January 18, 1848. Its purpose was to secure the retention of a sufficient sum of money to guarantee all losses incident to the residencia. It apparently continued in force until July 7, 1860, when governors and captains-general were declared exempt from these discounts.[48]

It has already been stated that the residencias of provincial judges and governors, *alcaldes ordinarios* and treasury officials were taken by judges appointed by the president of the audiencia (the governor), with appeal to the tribunal. These cases, under certain circumstances, might be carried on second appeal to the Council of the Indies. There were some variations in the laws regulating these matters, but a general principle seemed to have been followed of granting jurisdiction over the residencia of an official to the authority which appointed him.[49] So we have the Council of the Indies exercising final jurisdiction over the residencias of viceroys and captains-general, and the governor and audiencia over those of the minor officials of the colony. Neither

[46] *Recopilación*, 5-15, notes 4 and 5.

[47] Reales resoluciones del consejo de 4 de Marzo de 1794, *A. I.*, 106-4-18; Royal Order of January 18, 1848, San Pedro, *Legislación Ultramarina*, I, 290.

[48] These discounts were "considered subversive of their authority (that of the governors); . . . the best guarantee of their acts is not a discount of some thousands of pesos, which is always penurious when compared with the honor and dignity of the persons called, on account of their elevated character and distinguished services, to hold these posts; and if, in former times, this practice had some foundation in the tardiness of communication between the Peninsula and these provinces, it does not exist today in view of the frequency of communication which enables said authorities to consult with the government of her Majesty in all the steps which are considered necessary in the territory of their command."—Royal Order of July 7, 1860, San Pedro, *Legislación Ultramarina*, I, 287.

[49] *Recopilación*, 5-15-4.

the governor nor the audiencia was to have complete authority in the matter, but each should participate, the audiencia assisting in the determination of whether the case merited investigation, and the governor making out the commission and appointing the judge if an investigation were decided on. The audiencia alone, was authorized to appoint judges of residencia for judicial officials only.[50] It was forbidden to interfere in the residencia, itself,[51] although this prohibition did not prevent the tribunal from reviewing the *autos* of residencia in second instance.

The length of time consumed in all the residencias except those of viceroys and governors was four months. For the latter the *cédula* of December 4, 1630 authorized a period of six months. These investigations were divided into two parts. During the first half, edicts or notices of residencia were posted throughout the district of the official concerned. These were printed in Spanish and in the common dialect, so that natives and others might read and know that the official was giving up his post and that charges might be brought against him, setting forth any misconduct, undue harshness, tyranny or dishonesty of which he had been guilty during his term of office. These notices invited them to register any charges which they might wish to make and gave them sixty days in which to do it. At the close of this period the judge of residencia opened an investigation in the town wherein the official under examination had resided (usually the capital of the colony or the chief town of the province). The actual trial of residencia might consume sixty days, or it might be prefunctory in its character and occupy a much shorter period, the entire question of time depending on the amount of evidence presented against the retiring official. On the other hand, as we have seen, the residencias of some governors occupied ten years. If the judge were taking a residencia in the provinces he was frequently delayed in arriving at his post, owing to the press of other business or the uncertainty of transportation facilities. In that event, perhaps he could not open the judicial investigation until the allotted time had already passed.

In the trial, two distinct lines of investigation were usually

[50] *Ibid.*, 7-1-16; 5-15-21.
[51] *Ibid.*, 2-2-53 and 54.

pursued: (1) Charges which had been made against the official were investigated, and (2) the records of his office were examined. The discovery was frequently made by the latter proceeding that the official had made away with money belonging to the government. The enquiry might show that he had been careless in the execution of the duties of his office, remiss in his attention to *encomiendas,* particularly neglecting the Indians thereon, or that he had been too ignorant or incompetent properly to try, record, and transmit the *autos* of the cases which had come before him in first instance. These defects might not become apparent until they were revealed in this examination.

The judge of residencia would seem to have been well occupied during the time he was conducting the investigation. He received and reviewed all charges made. In addition to auditing the records of his office, he had to pursue enquiries as to the truth of these charges. He examined witnesses both for and against the defendant and was supposed to give the official under investigation every opportunity to defend himself. He was relieved, however, of the trouble and responsibility of checking up the financial accounts of officials under residencia. This important matter was turned over to the treasury officials, who ascertained shortages, and held the bondsmen of the official under investigation responsible.[52] The judges of residencia and the *oidores* making investigations and reviewing cases of residencia were ordered to confine their examinations to "criminal and legal matters and charges which result against those under residencia."

After all the evidence had been taken and the case had been duly tried, the judge of residencia was authorized to render sentence. Sentences were executed by the examining judge if the penalty did not exceed a fine of twenty-five thousand *maravedís.*[53] Such cases were not appealable. If the fine were less than two hundred ducats and the defendant desired to appeal, he was obliged to pay the fine or deposit the amount. His case would then be reviewed by the audiencia, and in order to effect this, notice of appeal had to be submitted in sufficient time to permit

[52] *Ibid.*, 8-1-28; 5-15-35. Heavy penalties were imposed upon those who offered insecure financial guarantees (*Ibid.*, 5-15-33 to 36).

[53] About 55 pesos.

the record of the entire case to be committed to writing. If, on reviewing the case, the audiencia found that the defendant was guilty of the charges brought against him, the money taken as a fine or on deposit was restored. If the amount of the fine exceeded two hundred ducats, or if the defendant were convicted of serious crimes, the judge was authorized to take the proper and necessary steps for the detention of the prisoner and the seizure of his property, pending a new trial in a higher tribunal.[54] Cases involving more than one thousand pesos could be carried to the Council of the Indies.

A thoroughly typical case, illustrating all of the steps in the residencia of a provincial official, was that of Francisco Fernández Zéndera, *alcalde mayor* and military captain of the province of Ilocos.[55] It was investigated first by a judge appointed by the *acuerdo* of the audiencia; it was reviewed by the audiencia, and it was finally carried to the Council of the Indies. It was characteristic in another sense: namely, that twelve years transpired before the matter was settled.

After Zéndera had occupied his post three years, complaints against him were brought to the attention of the *fiscal.* The latter, in his capacity as prosecuting official and as protector of the Indians, made a motion before the audiencia in *acuerdo* that a judge of residencia be sent to conduct an investigation of Zéndera's official conduct. The following complaints against the latter had been sent to the governor and on the basis of these the *fiscal,* governor and audiencia decided to conduct the investigation. First, Zéndera had compelled the natives to work for him on his own estates, building houses, granaries, fences, bridges, tilling the soil and planting and harvesting crops,—a species of slavery. From two to three hundred men had worked for him continually, without pay or food. Second, the arbitrary methods of this *alcalde mayor* left the natives without money with which to buy their food or to pay their tribute. Third, not only were the men forced to labor, but the native women were obliged to

[54] *Ibid., ley* 39; 2-16-46.

[55] Expediente de Don Frco. Fernández Zéndera, alcalde mayor y capitán de guerra de la provincia de Ilocos, . . . su residencia pendiente de informe de la audiencia, 1794, *A. I.,* 106-5-4 and 5. The papers relating to this trial easily aggregate 4000 pages.

sew, spin and embroider without pay and the product of their labor was confiscated by the *alcalde mayor*.

The audiencia and the governor, having taken note of these charges as prescribed by law, commissioned Angel Moguel, chief secretary of government, to conduct the residencia of the *alcalde*. Moguel was put in possession of the necessary documents and departed at once for Vigán, the chief city of the province. On November 7, 1782, he posted notices to the effect that Zéndera's residencia was to be taken, calling on the residents to make formal charges against him. Moguel suspended Zéndera from office and accepted 20,000 pesos from two of his friends as bonds to cover the residencia, this sum offsetting the valuation of the properties for which Zéndera was responsible. These were additional to other bonds which Zéndera had posted on his accession to office.

For some unassigned reason, probably because of the lateness of Moguel's arrival, only twenty-five days were allowed for the filing of complaints, but during this time eighty-eight charges were made, most of which were variations of those mentioned above but differing in their official character in that they formed a part of the residencia itself. Zéndera was said to have been uncompromising in his administration of justice; he had imposed excessive fines; he had imprisoned the natives without giving them opportunities for defense; he had refused to allow them to appeal their cases.[56] Not being a lawyer, he had lacked sufficient qualifications for the proper conduct of trials, and he had refused to employ a trained legal assistant (*teniente-asesor*). He had failed to supervise or enforce the instruction of Spanish and he had done nothing to assist in the education of the natives, as he was required by law to do. Zéndera was charged with having suppressed all commerce except his own, going so far as to arrest merchants of other provinces who had come to Ilocos to trade.

[56]It was said that he had shown favoritism in his dealings with some of the *barangay* chiefs, allowing them unbridled license in the collection of tribute and in the enforcement of compulsory labor, most of which they utilized for their own or for his benefit. One chief was said to have gone so far as forcibly to take carabaos from the natives when the latter were working them in the fields. Zéndera had, of course, extended favors to these *barangay* chiefs in exchange for reciprocal advantages. (The *alcaldes mayores* ruled the native population through these chiefs at this time. They also utilized the *gobernadorcillos*, native or *mestizo* governors of the small towns.)

This he had done in order to secure his own monopoly in commercial matters within the province. He had, moreover, suppressed the trade of the neighboring tribe, the Igorrotes, with the Ilocanos. He had failed to segregate the men from the women in the provincial prison. It was said that he had neglected to publish the governor's edicts (*bandos*) from Manila. He had shown partiality to Spanish priests in preference to the native clergy. He was charged with having taken rice as tribute at a low price, turned it over to the treasury officials at a high rate, thereby having made great profits for himself.

Zéndera was found guilty of almost every charge made against him. The sentence of residencia was pronounced by the judge commissioned for the purpose on August 13, 1782. The defendant was fined 8,000 pesos and sentenced to deprivation of office for a period of five years. The audiencia, in turn, reviewed the case and that tribunal, on May 20, 1783, ordered Moguel back to Vigán for a second time to complete the investigation. The judgment of residencia after this second investigation was the same as before, and the case was carried to the Council of the Indies on November 7, 1785. It seems that the audiencia had been slow in granting the appeal, for on February 19, 1788, a *cédula* ordered the audiencia to forward all *autos* in its possession bearing on the case. The final judgment of the Council of the Indies was rendered March 23, 1794. The fine of 8,000 pesos was reduced to 3,000 and the sentence to deprivation of office was remitted altogether.[57]

The *cédula* of August 24, 1799, already referred to, greatly altered the applicability of the residencia of provincial officials. Its greatest importance consisted of the fact that it authorized investigations only when charges were made, otherwise it was assumed that the conduct of officials had been satisfactory, and accordingly no residencia was held. Before officials were transferred to other posts they were obliged to show certificates of clearance from former positions. The audiencia was given final

[57]The original sentence probably denied to Zéndera the privilege of holding the office of *alcalde mayor* only, since he occupied the post of *regidor* of the city of Manila pending the appeal of his case to the Council of the Indies. It is evident, therefore, that the sentence which was pronounced upon Zéndera did not apply to all positions of honor and trust.

jurisdiction over the residencias of *corregidores, alcaldes mayores* and subdelegate intendants, with inhibition of appeal. At the same time the tribunal was denied jurisdiction in any instance over the residencias of viceroys, superintendents, captains-general, presidents, governors, treasury officials, *oidores* and intendants.[58] After the suppression of the Council of the Indies on March 24, 1834, the latter cases were finished in the Supreme Tribunal of Justice, and that tribunal continued to exercise this jurisdiction until the close of the nineteenth century.[59]

The *cédula* referred to above abolished the residencias of *tenientes-letrados* (*asesores*), *alcaldes ordinarios, regidores,* clerks, procurators, sindics, *alguaciles* and other minor officials. In place of the formal investigation and judgment after the term of office was completed, the audiencia was given greater control over their official acts, with the duty of seeing that justice was administered, jails inspected and kept clean, prisoners given a speedy trial and not molested with undue exactions. The tribunal was also empowered to see that the municipalities conducted their elections impartially, and that the municipal officials, including the police, executed their duties faithfully. In this, the formal investigation at the close of the terms of these minor officials was replaced by a more efficient supervision by the audiencia, which was calculated to act as a preventive of the ills which had formerly been avenged, too late, by the residencia. The constitutional reforms of the nineteenth century gave to the audiencia original jurisdiction over the trial of judges of first instance with appeal to the Supreme Tribunal of Justice. This regulation was abolished in 1815, but was restored in 1835, after which date this authority remained to the audiencia.

Although the reform of August 24, 1799, recognized the residencias of *alcaldes mayores, tenientes* and *corregidores,* merely transferring jurisdiction over these to the audiencias, it would seem that this investigation retained less of its former severity from this time onwards. In fact, some authorities infer that the

[58]*Cédula* of August 24, 1799, *Recopilación,* 5-15, notes 4 and 5; see also San Pedro, *Legislación Ultramarina,* I, 282.

[59]Escriche, *Diccionario,* I, 578; see also Royal Order of November 20, 1841, and of January 18, 1848, San Pedro, *Legislación Ultramarina,* I, 280 *et seq.*

residencia was abolished after 1799.[60] This was not the case, however, as the residencia was recognized by laws as late as 1870.[61]

The residencia was essentially a Spanish institution. Its principles were inherited from the Romans. It was adapted through three hundred years to the needs of a vast colonial empire. It cannot be said that it was a success. Its purpose was to deter government officials from abuses rather than to inculcate a sincere desire on their part to fulfill the duties of their offices conscientiously and justly. The necessity for the residencia would have been eliminated by a more careful selection of men for offices. The residencia was the culmination of a period of service in an office which had been purchased, usually, and which was not regarded as an opportunity for service but as a means of yielding the greatest possible profit to its holder. Aside from the obvious defects of such a system, the residencia came too late in the period of service, held as it was at the end of the term. It sought to punish offenders and correct evils rather than to prevent them. This was the most serious fault of the residencia.

[60]Alcubilla (*Diccionario*, XI, 477) and Escriche (*Diccionario*, II, 819) state that the *cédula* of August 24, 1799, abolished the residencia. The last mentioned authority states that the residencia had proved to be a grave infliction on the towns; the judges had mistreated witnesses and defendants on many occasions, and it was thought advisable to discontinue the practice of holding these investigations. On the other hand, Escriche quotes extracts from the laws of August 24, 1799, September 26, 1835, and November 20, 1841, wherein were provided regulations for the future continuance of the residencia.

[61]See *cédulas* of July 7, 1860, San Pedro, *Legislación Ultramarina*, III, 286; Royal Order of July 25, 1865, *Ibid.*, X, 99; Royal Order of October 25, 1870, *Colección Legislativa*, CV, 442-465.

THE POWERS OF THE COMMANDER OF THE CONFEDERATE TRANS-MISSISSIPPI DEPARTMENT, 1863-1865

FLORENCE ELIZABETH HOLLADAY

1. The Organization of the Trans-Mississippi Department

During the last two years of the war of secession, the situation in that part of the Confederacy which lay west of the Mississippi was without a parallel in the history of modern warfare. A vast territory, thinly populated, undeveloped, practically without railroads, cut off from its principal source of military supplies, having but precarious and infrequent communication with the general government to which it must look for direction in the desperate struggle for independence, it was thrust back upon its own resources and forced to acquiesce in a governmental arrangement of an unusual design. By common consent, under pressure of necessity, a military chieftain assumed the functions, in large part, of the president and cabinet and attempted to carry on the government under constitutional forms without resort to martial law. The conditions which brought about this extraordinary situation, the problems which beset the head of this government, the functions which he assumed and exercised, and the relations which he sustained to the local civil governments and to the distant and all but inaccessible government at Richmond, constitute an important but hitherto neglected part of the history of the Confederacy.

Though the Confederate government was organized quickly, it was hardly in operation before the war was in actual progress. Among the many questions which pressed upon the Executive and Congress was that of the organization of military departments. At first the territory west of the Mississippi was divided into several departments; then it became a district, the Trans-Mississippi, of the Western Department.[1] This district was too large

[1] *Official Records, War of Rebellion*, Series I, Vol. VII, 826. Hereafter in this paper these Records will be referred to as *Off. Recs.*, and when Series I is cited, no series number will be indicated. The volumes will be referred to in large Roman, the parts in small Roman, and the pages in Arabic.

for effective administration, however, and in May 1862, it was erected into the Trans-Mississippi Department, which was composed of the districts of Arkansas and Texas. The Arkansas district, which included Arkansas, Missouri, and that part of Louisiana lying north of the Red River, was placed under the command of Major General T. C. Hindman; while the Texas district, consisting of Texas and the remainder of Louisiana west of the Mississippi River, was assigned to Major General P. O. Hébert.[2] There was strong objection in Louisiana to this arrangement since it divided the state between two districts and gave it adequate protection in neither. The protests which were made to the President by state officials[3] and the steady advance of the Federals on the Mississippi probably led to the next change. In July Major General T. H. Holmes was sent to command the Trans-Mississippi Department. He made Louisiana a separate district and assigned Major General Richard Taylor to command it. The Indian Territory was added to the Arkansas District and Arizona and New Mexico to that of Texas.[4]

During the first two years of the war, Galveston and minor posts in Texas had been captured and retaken; New Orleans and much of the coast country in Louisiana had been seized; Missouri had been overrun; and the Confederate forces in Arkansas had lost control of the Mississippi and had been driven south of the White River. The greater part of this department had been untouched by invasion, but the continued advance of the Federals on the Mississippi threatened the separation of the west from the east. These disasters aroused the people everywhere. In the west especially the feeling became intense. Soon after the fall of New Orleans, leading men began to urge the officials at Richmond to make arrangements by which this department could be maintained and protected if the river should be lost. Guy M. Bryan of Texas, May 2, 1862, urged upon the congressmen from his state that the government send representatives of the war and treasury departments west of the Mississippi. Governor Moore of Louisiana, two days later, telegraphed the President that if the

[2]General Orders No. 39, War. Dept., May 26, 1862, *Off. Recs.*, IX, 713; General Orders No. 1, [Hébert] June 18, 1862, *ibid.*, 719.

[3]Moore to Randolph, July 25, 1862, *Off. Recs.*, LIII, 819.

[4]General Orders No. 5, August 20, 1862, *ibid.*, IX, 731.

river should be lost the military operations west of the Mississippi would have to be independent of those east of it and that the general in the west must be invested with plenary powers.[5] In some parishes and counties of Louisiana and Arkansas a condition little short of anarchy prevailed. By the fall of 1862, some parts of both Texas and Arkansas had been illegally placed under martial law. The organization of the department was loose and ineffective. The Arkansas delegation in Congress sent a memorial to the President asking that abuses in that state be corrected and that General E. Kirby Smith be sent to command the Trans-Mississippi Department. One after another these reports piled up evidence of the demoralization in these states. Actuated by these demands, by apprehensions of the loss of the river, and by the necessity of strengthening the military organization of the department, the President, February 9, 1863, gave orders for the unification of the department and assigned E. Kirby Smith to its command.[6]

General Smith assumed command of the department, March 7, 1863, and after a short time, made Shreveport, Louisiana, his headquarters. For a time he continued the districts as they had been organized—Major General Richard Taylor in command of Louisiana, Major General Magruder in Texas, and Major General Holmes in command of the district of Arkansas.[7] A vigorous policy was attempted. Strenuous efforts were made to change raw troops into an efficient army, to consolidate or distribute the means

[5] *Off. Recs.*, LIII, 804, 805.

[6] General Orders No. 1, March 7, 1863, *Off. Recs.*, XXII, ii, 798. See also Davis to Holmes, February 26, 1862, *idem*, LIII, 849-850, and Davis to Garland, March 28, *ibid.*, 861-863.

Edmund Kirby Smith, a native of Florida, was educated at West Point and in 1845, was assigned to the infantry. He fought under General Scott in the Mexican War and was promoted to the rank of First Lieutenant, then to that of Captain. After the war he taught mathematics at West Point till 1852, when he was sent against the Indians on the Texas frontier. When Florida seceded, he resigned his commission in the United States army and entered the Confederate service as lieutenant-colonel. During the first two years of the war, he was promoted step by step to the rank of lieutenant general, and in 1864, he attained the rank of general. During the last two years of the war his life was closely interwoven with the history of the Trans-Mississippi. At his death in 1893 he was professor of mathematics in the University of the South, at Sewanee, Tennessee.

[7] Major General Magruder had succeeded Major General Hébert in the fall of 1862. *Off. Recs.*, XV, 826, 880; XXIII, ii, 803.

at hand for the best results to the service, to instill confidence into the troops, to secure the support of the people, and to initiate a policy that would make the department self-sustaining.[8]

The government, busy with its organization, its many perplexing problems, and the fiercer struggle raging nearer Richmond, had failed to provide for this remote department. When at last, in the spring of 1863, it realized the disastrous consequences of this short-sighted policy and attempted to avoid the embarrassments which the previous neglect had already brought about, it was really too late, for the commanding general was never able to overcome the handicap nor to avoid the injuries which resulted from this earlier inattention to the affairs of the Trans-Mississippi region.

2. The Commander and the State Authorities; the Marshall Conference.

General Smith early realized that the isolation of his department and the unusual responsibilities which devolved upon him would force him to assume functions not ordinarily exercised by military officers under a constitutional government. Shortly after the fall of Vicksburg he wrote to the war office at Richmond:

"Without the assumption of extraordinary powers, my usefulness as department commander will be lost. If possible, instructions and orders to meet this emergency should be sent by special messengers. I feel I shall now be compelled to assume great responsibilities, and exercise powers with which I am not legally invested. . . . I entreat him [the President] to send heads of departments west of the Mississippi, with extraordinary powers for the organization of a government."[9]

[8] Seddon to Davis (annual report) November 26, 1863, *Off. Recs.*, Series IV, Vol. II, 1016.

The Trans-Mississippi Department included an area of approximately 735,000 square miles. Its population, exclusive of Indians, was, in 1860, about 2,728,870. The white male population of military age, from 18 to 45 inclusive, was, exclusive of those in the territories, approximately 500. (This area is computed from Redway and Hindman's *Natural Geography*. The population is taken from the *United States Census Report for 1860*, but the division of the state of Louisiana and the failure of some counties to report the census at that time make it impossible to get very accurate figures.)

[9] Smith to Cooper, July 28, 1863, *Off. Recs.*, XXII, ii, 949.

Despite these and other urgent messages, the Federals were in full control of the Mississippi before any response came from Richmond. By this time the people in the west were in the depths of despondency and mutterings against the government were heard from disaffected spirits. There were rumors that the states of this department would secede from the Confederacy. General Smith, realizing the danger in this crisis and fearing that this spirit of despondency and hopelessness might lead to measures harmful to the department and to the Confederacy, had sent a circular letter, July 13, to the governors of the four states of his department asking them, with the judges of their Supreme Courts, to meet him in a conference at Marshall, Texas, August 15, 1863. His purpose, as he stated it, was to acknowledge the civil government supreme over the military; to invoke the power of the states to aid him; to try to make the people feel that a government remained to them capable of administering to their wants and necessities; and to secure the confidence, advice, support, and co-operation of the leading spirits and judicial minds of his department.[10]

Before time for the conference to assemble, the commanding general's position was greatly strengthened by suggestions from Richmond that he follow the very policy he had already entered upon. On almost the same day that General Smith had sent out his invitations to the conference, the President wrote advising him to explain so much of his plans to the governors as would prevent them from misconstrung his actions, and to confer with them, thus making them "valuable coadjutors without surrendering any portion of the control necessary for a commander to retain." Secretary Seddon also recommended, July 14, that he call to his aid the ablest and most influential men of the country, and that he establish a civil and a military government for the department.[11]

In answer to the commander's call, a group of prominent men gathered in Marshall, August 15, 1863. From Arkansas, came Robert W. Johnson, who represented Governor Flanagin, C. B. Mitchell, and W. K. Patterson; from Louisiana were Governor Thos. O. Moore, Colonel T. C. Manning, W. Merrick, and Albert

[10] *Off. Recs.*, XXII, ii, 935-936.
[11] *Off. Recs.*, XXII, ii, 926, 1004.

Voorhies; from Missouri, Governor Thomas C. Reynolds; from Texas, Governor F. R. Lubbock, W. S. Oldham, Colonel Pendleton Murrah, and Guy M. Bryan. These were all men of ability who possessed the confidence of the people of their respective states; and there is no doubt but that their recommendations had great weight with the authorities at Richmond in determining the best means of administering this detached department.

At this first meeting, General Smith submitted the recent letter from the Secretary of War and asked the conference to consider the following questions:

"1st. The condition of the states since the fall of Vicksburg; the temper of the people; the resources and ability of each state to contribute to the cause and defense of the department, and the best means of bringing into use the whole population for the protection of their homes.

"2d. The best means for restoring confidence, checking the spirit of disloyalty, and keeping the people steadfast, in the hope of the ultimate triumph of our arms.

"3d. The question of the currency, and the best method of securing the cotton of this department without causing opposition on the part of the people, and the best method of disposing of the same.

"4th. The extent of the civil authority to be exercised, referred to in the letter of the Secretary of War, July 14.

"5th. Appointment of commissioners to confer with French and Mexican authorities in Mexico.

"6th. Arms and ordnance stores."[12]

The conference was organized for business August 17, with Governor Francis R. Lubbock as chairman and W. K. Patterson as secretary. Committees were appointed to consider the questions submitted by the commanding general. The next morning the conference assembled to hear the reports of its committees. Judge Merrick made the report for the committee which had under consideration the extent of civil power to be exercised by the commanding general. The report, which was unanimously adopted, recommended that only such powers should be exercised by the commanding general as were then exercised by executive officers

[12]The above and all reports of the conference are found in *Off. Recs.*, XXII, ii. 1004-1009.

at Richmond, for, on account of his inability to communicate with Richmond, these were absolutely necessary in order for him to augment his army and put the department in the best state of defense; that such powers, which had not been granted by act of Congress to any general in the army, were only powers of administration, and should be exercised according to existing laws; that nothing should be changed except the agents by which the operations of the government in this department are carried on. Extreme caution on the part of the committee is shown by reference to the fact that no act of Congress authorized such assumption of power and that the state governments still existed and had officers capable of exercising all power inherent in such local units. The members of the committee made no effort to define specifically what functions were to be assumed, but they were careful to assert that the civil power was superior to the military.

The second report was from the committee to which had been referred the following subjects: the best means of restoring confidence and of checking disloyalty; the condition of the states, the temper of the people, and the ability of each state to contribute to the defense of the department; plans for bringing the entire population of military age into service; and measures to secure arms and ordnance. Underlying the solution of these questions was that of the military administration of the department. The report, which was adopted, declared that the mass of the people were still loyal to the cause of the Confederacy and had full confidence in the ability and integrity of the commanding general; it included a tabulated statement of the resources of the several states; and it showed that the supply of arms and ammunition received from the general government had not at any time been adequate, that now the loss of the Mississippi and the blockade of the Gulf coast had cut off the hope of receiving even a meager supply from that source and had thrown the department entirely on its own resources.

"Beleaguered as we are by the enemy," the report continued, "the commanding general can neither transmit reports nor receive orders from the capital. Hence the safety of our people requires that he assume at once and exercise the discretion, power, and prerogatives of the President of the Confederate States and his

subordinates in reference to all matters involving the defense of his department. The isolated condition and imminent peril of this department demand this policy, and will not permit delay; and we believe that all may be done without violating the spirit of the constitution and laws of the Confederate States, and without assuming dictatorial powers."

It was thus agreed that the general should assume war powers in this department, for the right to exercise the discretion, power, and prerogatives of the President and his subordinates in the defense of a department in imminent peril could hardly be less than war powers.

The report of the committee on the appointment of commissioners to confer with the French and Mexican authorities in Mexico was presented by Mr. Murrah. This report, which was also unanimously adopted, declared in substance that an understanding between the Confederacy and the different authorities in Mexico was very essential, partly because of the hostile relations between those French and Mexican authorities, but chiefly because of the entire dependence of the Trans-Mississippi Department on the ports of Mexico for supplies and for communication abroad. Such an understanding, it was stated, could best be reached by correspondence, which in the present state of affairs could not be conducted effectively through the Richmond offices; and as the correspondence would pertain strictly to the interests and immediate needs of this department, "the law, whenever the law speaks, and propriety, where the law is silent, points out the military commander of the department as the proper official" to conduct it. It was also suggested that an agent, intelligent, well-informed, one adapted to inspire confidence by his knowledge and discretion and not likely to be misled by flattery, be appointed and sent to Mexico. This agent, though perhaps not recognized by any rank or title, should have authority to find out the attitude of both governments toward the Confederacy, to see what arrangements each would make with regard to trade, to make explanations, to represent this department in matters of reciprocal interests to both parties, and to adjust differences concerning imports consigned to this department.

This is the first reference to and, as far as is known, the only authority for the assumption of this diplomatic or quasi-diplo-

matic function by the commanding general. Of course these state officials had no constitutional authority to confer such power on any person; and it seems that no recognition of it was ever made by Confederate officials. However, negotiations through Richmond would be impracticable; and the situation in the department required a representative who understood not only the vital needs of the department but also border and trade conditions and who could report to and receive instructions from the head of the department.

Since money is the barometer not only of issues but of nations, it was appropriate that the report dealing with currency and the best means of securing the cotton of the department, be made very exhaustive. Senator W. S. Oldham, chairman of the committee, read the report which is summarized briefly here. It stated that cotton was the only safe and reliable means of supporting and defending the department; that the impressment acts gave authority for the use of cotton for military necessity; but, since it was impossible to secure treasury notes to buy the cotton and since to pay for it with them would increase the number of such notes in circulation and thereby tend to depreciate the currency still more, the committee proposed:

"That certificates be executed and delivered to the owners of the cotton purchased, pledging the Government for the payment of the price agreed upon in 6 per cent coupon bonds, the interest to be paid semi-annually from the date of the certificate in specie. . . ."

The interest for the first two years was to be paid from the proceeds of the cotton, but after that time it was expected that the government would pay it. General Smith was advised to take charge of all cotton in the department, except such as he should decide would be needed for the welfare of the people. This, it was believed, would take the cotton trade out of the hands of speculators and thereby prevent the further accumulaton and therefore the further depreciation of the Confederate notes in the department. As to the currency, it was suggested that, since money could not be obtained from Richmond, the commander, in the exercise of the special powers conferred upon him by the President, cause the Confederate notes not bearing interest, which had been funded with the various depositories within the depart-

ment, to be re-issued and used for the support of the army. It was considered that the government would accept these notes for bonds of the same rate of interest as the new issue. This report was unanimously adopted except the clause which recommended the issuance of the specie payment coupon bonds. On this the vote was a tie, but the records do not indicate who opposed it.

After all reports had been made, a resolution was passed voicing the confidence of the members of the conference in the skill, ability, and personal integrity of General Smith and of his regard for law. The general then expressed his gratification for the work accomplished, and the conference adjourned.

For the double purpose of stimulating popular zeal and of recognizing and endorsing the commanding general and his work, the four governors, R. W. Johnson acting for Governor Flanagin again, prepared and published an address to the people of the department. Its bombastic tone and the fact that the measures of the conference were so artfully and completely omitted indicate the terrible tension of the people and the serious apprehensions of these men for the success of the plans they had devised.

From a legal point of view, the work of the conference had no constitutional sanction whatever, but at the time, the commanding general, the President, and the secretary of war, as well as the state officials, considered it necessary and wise. If the people opposed it, the few newspapers available give no evidence of criticism. Its measures seem to have been accepted generally, and there can be little doubt of its salutary effect in the department. The authorities of the four states had not only compared resources and come to realize fully their great needs; but they had given to the commander of the department, who alone was able to assume the general direction of affairs, a moral support without which his every effort would have been futile.

3. Powers Delegated by the Confederate Executive

The Richmond officials appreciated at once the difficulties of both civil and miltary administration which the fall of Vicksburg and Port Hudson had placed upon the conduct of the government west of the great river. Two weeks before General Smith had sought from them official sanction for his plans or instructions as to what other course he should pursue, both the President

and the Secretary of War, as we have already seen, had written him on the same subject. The President's letter touched on every phase of the military service in the department—the probability of invasion by the enemy, the operations that would be most possible, the agricultural resources, the mineral wealth, and the efforts that had been made to establish factories and mills in the department,—but in no way did he intimate that the commander should extend his authority over civil affairs and he referred to the anomalous conditions west of the Mississippi only in general terms: "By the fall of our two fortified places on the Mississippi . . ., your department is placed in a new relation, and your difficulties must be materially enhanced. You now have not merely a military, but also a political problem involved in your command."[13]

Secretary Seddon's letter of the same date has not been preserved, but from references to it, its tenor is easily inferred. The general was told that he would have to assume large military powers, "to exercise powers of civil administration," and that he would have to form a civil and military government. It seems, however, that Seddon gave no definite instructions and merely suggested that the military administration be carried on by means of bureaus corresponding to those of the war department in Richmond. It was this letter, later referred to by Seddon as unofficial, which Smith had laid before his conferees at Marshall on August 15. Shortly afterwards, August 3, and before Smith's letter of July 28th could have been received, the secretary wrote that it would be impossible to give special instructions at such a distance, and that what measures should be adopted must be left largely to the commander's discretion, but suggested that Smith put himself in touch with the governors of the Trans-Mississippi states in order to maintain a cordial understanding and co-operation in carrying out his plans, and that he further seek the advice and influence of leading citizens throughout his department—the very things that Smith had already undertaken to do.[14]

The advice of Davis and Seddon lacked much in definiteness

[13]*Off. Recs.*, XXII, ii. 925-927.
Although the context is not clear, it is probable that Davis had in mind chiefly the necessity of removing the causes of dissatisfaction in Arkansas and of composing possible state jealousies.

[14]Seddon to Smith, August 3, 1863. *Off. Recs.*, XXII, ii, 952-953.

with respect to the most delicate problems which confronted General Smith. But they must have found it difficult to know what to say. This vast Trans-Mississippi department, comprising practically half of the country, was cut off from its government and its chief source of military supplies. It was impossible for the civil officers of the general government at Richmond to continue to direct affairs in that remote region; but there seemed to be no constitutional way by which important political functions could be entrusted to a military officer, even though the logic of the situation required that he who was responsible for the well being of the department should have all powers necessary to maintain and defend it. Moreover, Congress was not in session, and there was no way of determining to what extent that body would support the delegation of special civil powers to a military chieftain. To do all that the situation seemed to demand even with the support or the express authority of Congress, might easily arouse anew the opposition of that troublesome faction who insisted upon a strict adherence to the constitution regardless of other considerations. The consequences were problematical, especially since there was believed to be an element in the Trans-Mississippi Department which was clamorous for separation from the Confederacy.[15] It was probably considered unwise either to bind General Smith with precise instructions or to confer upon him unreservedly authority over civil affairs—if, in fact, so much thought was given the matter. If his powers were vaguely defined there was less likelihood that he would be charged with exceeding them. If he was to fulfill the expectations of the government in making it self-sustaining, it would be impossible to confine his powers within the narrow limits of the law. It is said that the President once told General Smith's aide, Major Cucullu, whom the general had sent to him for instructions, that he did not dare to put on paper the powers which the general must exercise, because they were so great.[16] This statement, if accurate, indicates that Davis, who always sought to avoid the appearance of departing from constitutional methods, was inclined to wink at the assumption of powers which he was unwilling expressly to authorize Smith to assume.

[15]Davis to Johnson, July 14, 1863. *Off. Recs.*, LIII, 879.

[16]Major Cucullu made this statement to Dr. Chas. W. Ramsdell of the University of Texas in December, 1913, in New Orleans.

The documentary evidence points in the other direction. When the general's letter of July 28, requesting approval of his assumption of extraordinary powers, was laid before the President, Mr. Davis endorsed upon it: ". . . My confidence in the discretion and ability of General Smith assures me that I shall have no difficulty in sustaining any assumption which may be necessary. Able heads of departments should be selected and large discretion allowed." But this concession, as is evident from the letter of Seddon which conveyed it to Smith, referred not to other cabinet departments, but only to bureaus within the war department.[17] If after this, any hope lingered in the mind of General Smith that the President would expressly confer upon him authority over the subordinates of the executive departments other than that of war, it must have been dispelled by the explicit declaration in a later communication from Seddon that his previous suggestion that Smith should "exercise powers of civil administration . . . only meant such matters of an administrative character as were naturally promotive of or connected with military operations and appropriately pertained to the executive functions of the Confederate Executive. . . . What I had particularly in mind were the various administrative branches of service that minister to the supply, equipment, and furnishing of arms in all their branches of service . . . [These would be] analogous to our bureaus" [in Richmond].[18]

As a matter of fact, Smith had anticipated the suggestions of his superiors with respect to these bureaus. By a series of orders

[17]Seddon's language was: "Heads to any of the branches of service which are needed from here will be sent with large powers as you suggest; but I would recommend as a mode of adding to your influence and avoiding dissatisfaction and jealousy, that as far as you have competent persons in your department, you engage and recommend such for confirmation by the department. . . . I shall await your specific recommendations. . . . of such officers as are specially needed." August 30, 1863. *Off. Recs.*, LIII, 895.

[18]Seddon to Smith, October 10, 1863. *Off. Recs.*, XXII, ii. 1039. Seddon added by way of illustration: "Now, the main offices of our bureaus may be executed effectively by assigning or placing at the head of each an existing military officer or agent already appointed for your department by one of the bureaus here. A chief commissary may discharge the duties, with the aid of appropriate subordinates, of the Bureau of Subsistence. A leading quartermaster, a competent adjutant, a chief of ordnance, the agent appointed by the Niter and Mining Bureau for your department may each, with appropriate assisting officers, discharge the duties of the corresponding bureaus here." *Ibid.*

during August and September, he had established commissary, quartermaster's, ordnance, and medical bureaus at or near his headquarters and had placed over them officers from his staff. All subordinates who under ordinary circumstances would make reports and returns to the heads of these bureaus at Richmond were directed to make reports to these new bureau heads.[19] He had even gone further by the creation of a "cotton bureau," which had never been authorized anywhere, either by act of Congress or by order of the President.[20] He had also asked that the appointing power be delegated to him, subject to the approval of the President, until communication should be reopened with Richmond. He especially desired authority to issue invitations to appear before medical boards, to appoint staff officers of new organizations, to accept resignations, and to fill all vacancies. In this, however, he was trenching upon a constitutional prerogative which Davis cherished with jealous care. The President endorsed upon the request: "The power to appoint cannot be delegated. The Constitution confers it upon the President only, by and with the consent of the Senate. Promotions, elections, examinations may occur and be acted on for the time, officers may be assigned to staff duty, and thus the difficulty, recognized to the full extent described, may be practically removed. All which can be legally done will be performed by the Executive branch of the government to diminish, if it cannot remedy, the evil."[21] The authority to regulate medical boards and to extend invitations to appear before them had already been accorded.[22]

The failure of the secretary of the treasury to make a satisfactory arrangement for the supply of funds in the department had

[19]See General Orders, Nos. 37 and 41 in *Off. Recs.*, XXII, ii, 969, 991, and Smith to Davis, September 11, 1863, *ibid.*, 1004.

[20]General Orders, Nos. 35, August 3, 1863. *Off. Recs.*, XXII, ii, 953. See also Seddon to Davis, January 23, 1865, *idem*,. LIII, 1039-1040. Smith's delegation to the cotton bureau of general control over the purchase and exportation of cotton on government account resulted in vigorous protests from Major Simeon Hart, quartermaster, to whom the secretary of war had previously entrusted the same task. Seddon, however, refused to interfere and explained to Hart that the whole matter must rest in the hands of General Smith. *Off. Recs.*, LIII, 904-905, 908-909.

[21]Smith to Seddon, September 12, 1863, with endorsements. *Off. Recs.*, LIII, 895-896.

[22]Seddon to Smith, September 7, 1863. *Off. Recs.*, XXVI, ii, 213.

greatly hampered General Smith from the first and now caused him acute anxiety. No means were in sight for paying the troops or for providing for other needs of the army during the coming winter when a campaign against the federal forces was in prospect. After repeated appeals to Richmond, in one of which he threatened to attempt to raise a loan directly from the people, an arrangement was made by which he was to be supplied with funds by the restamping and reissuing of old notes at the depositories within his department.[23] Agents were appointed from Richmond to carry this plan into effect, but Smith was given no authority over them, and they were unable to afford adequate relief.

The net result, therefore, of General Smith's request for the grant of larger powers by the executive department was, first, an extension of authority over those bureaus of the war department hitherto not usually under the orders of commanders in the field, but directly under the secretary of war; and, second, the permission, grudgingly given, to make temporary assignment of officers to rank pending appointment and confirmation at Richmond. Over the operations of other cabinet departments no authority was definitely granted.

4. Powers Authorized by the Confederate Congress

The first Confederate Congress met in its fourth session, December 7, 1863, five months after the fall of Vicksburg. The extraordinary events which had transpired since its adjournment in May furnished numerous questions for its consideration, and one of them was the policy which it should adopt for the administration of the Trans-Mississippi Department.

In his official report for the year 1863,[24] the secretary of war explained the conditions in this department, due to its isolation, and urged that it would be judicious for "some extraordinary powers of military administration" to be entrusted to the general commanding, and that legislation should be enacted providing for the establishment there of separate offices under competent heads for the various cabinet departments, and of bureaus of the war de-

[23]Smith to Davis, September 28, 1863. *Off. Recs.*, XXII, ii, 1028; Seddon to Smith, October 10, 1863, *ibid.*, 1040.

[24]November 26, 1863. *Off. Recs.*, Series IV, Vol. II, 1016-1017.

partment under the commanding general analogous to those at Richmond.

The president's message summarized the conditions resulting from Federal control of the Mississippi, the difficulties encountered by the executive and the heads of departments in administering the Trans-Mississippi Department at that time, and the impossibility that officials east of the river should control operations west of it. He recommended that representatives of the post-office and treasury departments be placed west of the river with authority in the head of each department to vest in the assistant full power to operate the sub-department; while for military affairs, he advised that the president and secretary of war be authorized to "delegate to the commanding general so much of the discretionary power vested in them by law as the exigencies of the service shall require."[25]

Resolutions were at once adopted in each house looking toward the legislation recommended. On January 5, a bill entitled "An act to authorize the appointment of an Assistant Secretary of the Treasury west of the Mississippi" went to the senate from the house. This bill amended to read "agent" instead of "Assistant Secretary" became a law January 27. This act empowered the president by and with the advice and consent of the senate to appoint an agent of the treasury who should reside west of the Mississippi and discharge such duties as should be assigned him by the secretary of the treasury. The secretary could empower the agent to discharge any duty or function west of the river that the secretary himself could discharge. To make this branch office effective, other bills were passed in a short time providing for the establishment in this department of two bureaus of the treasury, the one of the auditor and the other of the comptroller. The chiefs of these bureaus were to receive and disburse all the public money for the department; to keep the necessary accounts; to file evidences of all claims against the government in this department, which hitherto had been required to be filed in the state department; to receive instructions from and to report all transactions to the agent of the treasury for the department.[26]

[25]December 7, 1863. *Off. Recs.*, Series IV, Vol. II, 1045-1046; also in Richardson, *Messages and Papers of the Confederacy*, I, 377-378.

[26]For the history of these bills see *Journal of the Confederate Con-*

On February 10, 1864, President Davis approved a bill authorizing the establishment of an agency of the postoffice department west of the Mississippi. This bill gave him the power, by and with the consent of the senate, to appoint a postoffice agent for and resident in this department. The postmaster general, or if necessary the president, was authorized to vest said agent with such power as would enable him to perform all duties that might be required of him to keep up the postal service in that part of the Confederacy. The bill further provided that funds for this branch of the postoffice should be deposited with the treasury agent there and should be transferred to the different postmasters by orders of the postmaster general; the funds so transferred were then to become subject to the postoffice agent for all liabilities. All acts of the agent were to be subject to revision by and to the approval of the postmaster general, the proper accounting officers of the treasury, and when necessary to the approval of the president.[27]

At the beginning of the session the committee on military affairs was instructed "to inquire into the expediency of organizing and strengthening the Trans-Mississippi Department by the appointment of an Assistant Secretary of War." On February 13, the committee at its own request was discharged from further consideration of the matter, probably because of Seddon's opposition to it. He explained that, even though it was intended to make such agent subordinate to the commanding general, he feared the name or title would cause embarrassment. He preferred to leave General Smith in supreme control west of the river, and to organize auxiliary bureaus there.[28] An act was passed on February 17, 1864, providing for the establishment of such bureaus or agencies of the war department west of the river as the public service might require and auxiliary to those established by law at Richmond. This act empowered the general commanding this department under the authority of the president, or the secretary of war, to direct these bureaus, to assign staff officers and clerks to duty

gress, Vols. III, IV, VI, VII, *passim*. For the laws, see *Statutes at Large of the Confederate States*, 1st. Cong., 4th Sess., pp. 176, 230.

[27]*Statutes at Large of C. S.*, 1st Cong., p. 184.

[28]Journal of Congress of C. S., III, 453, 728; Seddon to Smith, June 15, 1864. *Off. Recs.*, XXXIV, iv., 672.

in them or to make appointments therein, subject to the approval of the president.[29]

Congress evidently intended that General Smith's control over the military administration in his department, though subordinate to the president and secretary of war, should be analogous to and as broad as that of his superiors. All later acts passed with reference to the military administration also reveal this intention. Only two such acts are shown here.

The president, February 15, 1864, approved an act to suspend the writ of habeas corpus in certain cases. This act declared the writ suspended, but that such suspension should apply only in cases of persons arrested or detained by order of the president, secretary of war, or the general commanding the Trans-Mississippi Department by the authority and under the control of the president. It further stated that during the time of suspension no military or other officer should be compelled to appear in court or to return the body of any person or persons in answer to any writ of habeas corpus held by him by order of the three named executive officials.[30] An act was passed February 17, 1864, authorizing the secretary of war or the general commanding the Trans-Mississippi Department to employ, or in case they could not do that, to impress free negroes and slaves to work on fortifications and perform other labor connected with the defense of the country.[31]

It is evident that Congress treated the Trans-Mississippi Department as a somewhat detached part of the Confederacy. Not only did it legalize the delegations of authority made by the president and secretary of war, but it extended the commander's powers in this field even beyond those granted by the executive officers. The department for all administrative purposes was repeatedly recognized as practically distinct from the Cis-Mississippi states. At any rate, the question of military administration was now settled though without prejudice to the president's superior authority.

Some interpretations by executive officers of the extent of the powers granted to General Smith are interesting and perhaps necessary in this connection. From a study of the bills referred

[29] *Statutes at Large of C. S.*, 202-203.
[30] *Statutes at Large of C. S.*, pp. 187-189.
[31] *Statutes at Large of C. S.*, p. 235.

to above and other sources, as has been shown, it does not seem that Congress considered granting any civil functions to the commander in the west. However, April 9, 1864, Davis explained to Governor Allen of Louisiana, with respect to the protection of citizens from unjust seizures by impressment officers, that General Smith had power to do everything in his department that he, Davis, could do. "He has power to execute the laws and that is the only authority I have."[32] In writing to General Smith con-

"As far as the constitution permits, full authority has been given you to administer to the wants of your department, civil as well as military."[33]

However, the context here does not make clear the exact meaning of the term "civil." In his annual report, dated April 28, 1864, Seddon said:

"The legislation of the late Congress for the Trans-Mississippi Department was both liberal and provident. Provision was made for the peculiar needs incident to its comparative isolation from the supervision of the central government, and all the agencies of a partially independent government were authorized. In the same spirit has been the action of the executive. Added rank and dignity have been bestowed on the able commander and administrator at its head, and to him have been entrusted the full measure of executive powers, which, under our constitutional system, could be exercised by others than the president."[34]

In another letter to Smith shortly afterwards the president declared that it had been his endeavor to extend the general's powers to the utmost limit consistent with law and the nature of the government; and that to meet the extraordinary circumstances in which the department was placed laws had been passed granting the commander fuller powers.[35] Seddon also wrote that he thought General Smith, besides his position as military commander of the department, should combine with his strictly military duties somewhat of the relation of the secretary of war to the department and the president.[36]

[32]Davis to Allen, April 9, 1864. *Off. Recs.*, LIII, 981-982.
cerning the work of Congress, he said:

[33]April 28, 1864. *Off. Recs.*, LIII, 986.

[34]*Off. Recs.*, Series IV, Vol. III, 341.

[35]Davis to Smith, June 14, 1864. *Off. Recs.*, XXXIV, iv, 671.

[36]Seddon to Smith, June 15, 1864. *Off. Recs.*, XXXIX, iv, 672.

Communication with Richmond was uncertain; it was months after laws were passed by Congress before they were received west of the river. The commanding general received few letters from chief officials during the winters of 1863-64 and 1864-65. He was beset with many difficulties; he had no means; there were conflicting claims and conflicting authorities; and copies of the laws which would have helped him were not received until months after their enactment. Under these circumstances, he had found it necessary in 1863, when organizing the cotton bureau, to assume control over treasury agents in the department. In December, 1864, the question of his authority to do this came up in the house, and the president was requested to submit to that body copies of all instructions from the secretary of war to General Smith by which the latter claimed the right to assume control over agents of the treasury. The data was submitted January 25, 1865, but so far as can be determined no action was taken.[37]

In this matter of granting civil powers, then, it seems that the executive officers early realized the necessity that some such authority be given to the commander of the department, but were unwilling to commit themselves definitely; that Congress was silent on the question of the control by the general of the non-military agencies it established in the department; that the executive officers, after the meeting of Congress, were inclined to interpret the delegation of power as extending over the civil administration, but they saved themselves by artfully inserting the qualifying phrase "so far as the constitution permits"; and that when General Smith, under pressure of necessity, assumed some of those functions, the authorities at Richmond acquiesced.

(*Continued*)

[37]Journal of Cong. of C. S., VII, 403-404; also see Seddon to Davis, January 23, 1865. *Off. Recs.*, LIII, 1309.

MINUTES OF THE AYUNTAMIENTO OF SAN FELIPE DE AUSTIN, 1828-1832[1]

I

EDITED BY EUGENE C. BARKER

Town of Austin, capital of the jurisdiction of that name, in the department of Bexar, State of Coahuila and Texas, February 10, 1828. Citizen Stephen F. Austin, appointed on November 17 by the superior order of the Most Excellent Governor of the State to hold the first municipal electoral assembly of the said jurisdiction—which order was circulated by the chief of the department on December 11 last—met with John P. Coles, James Cummins, Thomas M. Duke, Alexander Hodge, and Humphrey Jackson alcaldes; Alexander Calvit, Green B. Jamieson, Philo Fairchild, Thomas Barnett, Moses Morrison, William Kincheloe, Rawson Alley, John Elam, and Clement C. Dyer tellers; Lawrence Richard Kenney, John D. Tay[lor], John Andrews, Shubael Marsh, and John R. Foster secretaries. The lists of the electoral assemblies of the respective districts of the jurisdiction were opened, in conformity with the 3d article of the above superior order and in fulfillment of the 100th article of the Regulation for the Administration of Towns,[2] and the three general lists which said article

[1]The minutes of the ayuntamiento of San Felipe de Austin from its installation on February 12, 1828, to January 3, 1832, are in the Spanish department of the General Land Office at Austin, in three thin manuscript volumes. They were turned over to Ezra Cleveland, clerk of the district court at Bellville, by the county clerk in 1849, and by him transferred to the Land Office on April 30, 1852, under authority of a legislative act of February 9, 1852, for depositing land records in the Land Office. Volume 1 contains the minutes from February 10, 1828, to June 4, 1830, Volume 2 from July 5, 1830, to January 1, 1831, and Volume 3 from January 17, 1831, to January 3, 1832. Volume 1 contains 63 single sheets or leaves, written on both sides. With the exception of sheets 6, 7, half of 8, and 11 the first 41 sheets are in Spanish and are translated by the editor. Thereafter to the end of the third volume the record is bi-lingual with the Spanish on the left-hand page and the English on the right. In a few cases, indicated in the notes, it has been possible to replace a missing page of English by translation of the Spanish. Thanks are due Hon. James T. Robison, Commissioner of the General Land Office, for permission to publish these records. An account of the government of Austin's Colony before the organization of the ayuntamiento appears in this issue of THE QUARTERLY, pages 223-252.

[2]This decree (No. 37) is omitted from the official publication of the Laws of Coahuila and Texas, but there is a Spanish copy in the Austin Papers at

the University of Texas, and a translation by Stephen F. Austin in the *Texas Gazette*, Nos. 3, 4, and 5, October 13, 24, and 31. The University has Nos. 3 and 5, and Mrs. Mila T. Morris of Houston, Texas, has the first volume of the *Gazette* very nearly complete. The writer is indebted to the generosity of Mrs. Morris for the use of her copy. The law is so nearly inaccessible that the sections defining the functions of the ayuntamiento are here reprinted.

"Art. 109. The ayuntamiento shall promote the establishment of hospitals, poor houses, or houses of charity and benevolence, they shall take care that the streets, markets, public places and prisons are kept clean, and also that the apothecary shops and other establishments that may have any influence on the public health shall be kept in proper order to prevent deleterious effects.

"Art. 110. They shall not permit physicians or apothecaries to exercise their professions without a previous presentation of their diplomas or certificates from the respective scientific authorities or corporations, accrediting fully their qualifications. . . .

"Art. 111. The ayuntamiento shall have an inspection over the provisions and liquors of all classes that are offered for sale, and see that they are of good quality; they shall also take such timely measures as may be practicable for procuring supplies of the common necessaries of life in seasons of scarcity, so that the inhabitants may not suffer by famine.

"Art. 112. They shall . . . provide proper burying grounds beyond the limits of the towns. . . .

"Art. 113. They shall take care that the lakes and ponds be drained, so that water shall not stagnate in the towns.

"Art. 114. They shall remove whatever may jeopardize the health of the inhabitants or stock within the jurisdiction, when practicable to do so.

"Art. 115. They shall take special care to establish a board of health, even in settlements or towns where there is but one physician.

"Art. 116. They shall see that the streets are straight, paved and lighted, when it is practicable, and that shade and ornamental trees shall be planted, and public walks formed.

"Art. 117. They shall take care that the public roads of the district are kept in order and repair. . . .

"Art. 118. They shall also take charge of the repairing, preservation and construction of all works or buildings of public utility or ornament, within their respective jurisdictions.

"Art. 119. They shall take care that the woods and timber belonging to the commons shall be preserved and shall not permit one useful tree to be destroyed without planting three of the same kind in its place, and the owners of land shall be excited to take care of and augument their groves, but without interfering in the use or benefit they may choose to make of them.

"Art. 120. The ayuntamiento shall take charge of the administration and regulation of hospitals, poor houses, institutions of learning, and other establishments of a literary, scientific or benevolent nature that are supported by the public funds, and in those that are established by individuals they shall see that nothing contrary to the laws is permitted.

"Art. 121. Every six months they shall form a statistical account of the municipality, and every three months they shall call on the curate of the parish for a note of those born, married and dead, specifying the sexes, ages, and both documents shall be transmitted to the chief of partido.

"Art. 122. They shall not permit in their jurisdiction vagabonds, drunkards, gamblers by profession, nor any idle or vicious people who have no

visible means of subsistence; and, in order that they may dictate the necessary general measures to prosecute persons of this class, those are declared such:

"1st. Who live without any occupation, business or income.

"2d. Those who, being sound and vigorous, and of robust age, or who have an impediment that does not incapacitate them from work, go about from door to door begging alms.

'3d. Those who, possessing property or income, or being of respectable families, spend their time in gambling houses, and other suspicious places, to the public scandal, and who are disrespectful to the public authorities.

"4th. Those who have some profession or occupation, and are idle the greatest part of the year without just cause.

"5th. Day laborers who only work one day out of many, and who spend the time in idleness which ought to be employed in useful labor, without adopting any other honest means of subsistence.

"6th. Loose young persons from other places who have run away from their homes and have no fixed occupation, and also those belonging to the jurisdiction who have no other occupation than begging, either because they are orphans or because their fathers had abandoned them to this vile mode of living.

"Art. 123. The ayuntamientos will attend to the correction and reformation of such persons, and after examining the summary investigation to be made respecting them by the alcalde, they will, in accord with the alcalde, set them to work for a time not exceeding six months in some shop, farm or other useful occupation under the direction of their proprietors, or of some managers, and should they again return to their vices, they shall be condemned to public works for six months longer, but there must first be a previous investigation to prove that they have so returned to their vicious habits.

"Art. 124. They shall promote in the limits of their jurisdiction the planting and cultivation of all fruits and productions that can be raised, and are not prohibited by the laws.

"Art. 125. They shall make a distribution of the contributions assigned to each town or jurisdiction, proceeding in this with prudence and equity.

"Art. 126. They shall remove, in conformity with the laws and so far as may be possible, the obstacles that retard agriculture, industry, commerce and the progress of mining.

"Art. 127. They shall see that the sunpplies to be furnished to the troops, agreeably to the existing laws, are proportionately divided amongst the inhabitants.

"Art. 128. It is their particular duty to establish primary schools in all the villages or settlements of the jurisdicion, and see that everything shall be taught in them prescribed by the 215th article of the constitution, and for this purpose they shall designate, of themselves and with the knowledge of the chief of department, the means of raising the necessary funds to establish them in places that for want of such funds cannot have them immediately, and propose the same to the government for its determination on the subject.

"Art. 129. They shall appoint a committee from their own body to visit such schools weekly, and they will inform the government every six months as to the state of said schools, stating the aid that is needed for them, and the mode of remedying the embarrassments to their advancement, when such embarrassments cannot be removed by the sole authority of the ayuntamiento.

"Art. 130. They will excite, by every means in their power, the fathers

100[3] prescribes were formed. The result was that Mr. Thomas M. Duke received 131 votes for alcalde and Mr. Ira Ingram received 111 votes.

Mr. Thomas Davis, 223 votes for Regidor

Mr. Humphrey Jackson, 96 votes for idem

Mr. William Morton, 92 votes for idem

Mr. H. H. League, 24 votes for idem

Mr. Wyly Martin, 15 votes for idem

Mr. J. H. Bell 1 vote for idem

Mr. L. R. Kenney 1 vote for idem

[p. 1a] For Sindico procurador Mr. Rawson Alley received 218 votes and Mr. M. B. Nuckols 3 votes.

These elections having been announced by the presiding officer,

of families to send their children to school, and they will see that the curates exhort their parishoners to this effect.

"Art. 131. The funds and capitals of schools must be secured and their rents attended to to the satisfaction of the ayuntamientos and on their responsibility.

"Art. 132. The ayuntamientos shall see that all the strays that appear within the limits of their jurisdiction are taken up, and render an account of them to the government every six months. . . .

"Art. 133. The ayuntamientos shall have charge of the administration and application of the municipal funds. . . . They shall transmit annually to the chief of partido a certified account of the ingress and egress of said funds.

"Art. 134. The ayuntamientos that have not funds sufficient for their ordinary expenditures shall form an estimate of their annual expenses in the manner prescribed in article 91 of this law, and in the same manner propose the means of raising them. When it is necessary to have recourse to taxes to raise extra funds for building municipal houses and jails, or for their repair . . . an estimate of the costs of such buildings or repairs, and a plan of taxes for raising such extra funds shall be made . . . and transmitted to the government for approval.

"Art. 145. In order that the measures and resolutions of the ayuntamientos shall be executed and obeyed within their respective jurisdictions, they can impose fines on those who violate them, from four bits to fifty dollars; or imprison or condemn to public works from one to fifteen days those who are unable to pay such fine, proceeding in both cases by means of the alcalde who presides over said corporations. The fines shall be applied to the funds of the municipality.

"Art. 149. There shall be one secretary in each ayuntamiento, elected by the same, by a plurality of votes." . . .

[3]"Art. 100. On the next Sunday after the said election the ayuntamiento shall convene in their hall, and the president, tellers and secretaries of the electoral assemblies shall also convene at the same time and place, and three general lists shall be made from all the others, in one shall be set down the persons voted for for alcaldes, in another those voted for for regidores, and in the other those voted for for sindico procurador, placing the persons who had the highest number of votes first on the respective lists."

the list was immediately posted in the most public place, and it was agreed that attested copies should be taken from this to be sent to the Government, forwarding by *conducto* of Citizen Stephen F. Austin the official advice which article 103[4] of the above superior order.

The said Señor Stephen F. Austin read a translation of the laws of the state on the administration of justice,[5] on the political administration of towns, and a discussion of the powers and duties of the ayuntamiento.

The proceedings continued. A general list was formed of the persons who received votes for the position of commissaries of police and *sindicos* for the districts of Victoria and Mina. This showed that Thomas Barnett received 45 votes, G. B. Hall 35 votes and M. B. Nuckols 1 vote for commissary of the district of Victoria; and that Thomas Barnett received 38 votes, John D. Taylor 33 votes, William Harris 18 votes, and M. B. Nuckols 1 vote for *sindicos* of the same district. Barnett having received the greatest number of votes for commissary was declared elected to that office, in conformity with article 101[6] of law No. 37. In the same way, Taylor having received the greatest number of votes, after Barnett, for *sindico,* was declared legally elected *sindico* in conformity with the said article 101. For the office of commissary of the district of Mina William Kincheloe received 14 votes, Amos Rawls received 14 votes, and [p. 2] Daniel Rawls received one vote for sindico of the same district.

In virtue of which, Thomas M. Duke was declared to be elected alcalde, Thomas Davis and Humphrey Jackson *regidores,* and Rawson Alley *sindico procurador* for the new ayuntamiento of the said jurisdiction of Austin; Thomas Barnett commissary of police and John D. Taylor *sindico* for the district of Victoria; and Wil-

[4]"Art. 103. The President of the respective ayuntamiento shall give an official notice to the persons who, in conformity with article 165 of the constitution, are elected for the municipal offices."

said law No. 37 requires, and in fulfillment of article 4 of the

[5]See above, p. 246, note 83.

[6]"Art. 101. Should the same individual receive votes for alcalde, regidor and procurador, he shall only be set down on the list of the one for which he received the highest vote, and should such individual receive an equal number of votes for two or more of said appointments, that of alcalde shall take precedence over that of regidor, and the latter over that of procurador."

liam Kincheloe commissary of police and Amos Rawls *sindico* of the district of Mina.

Citizen Stephen F. Austin, President of the electoral assembly (*junta*), having given official notice to those elected, as article 103 of the regulation for the political administration of towns requires, and each one of the said persons having taken the oath which article 220 of the State Constitution requires, they assumed by this act their respective offices.

In conclusion of this session, the president, the alcaldes, tellers (*escrutadores*), and secretaries, and the the secretary of the jurisdiction signed these proceedings.

Estevan F. Austin
James Cummins
Alexr Hodge
John P. Elam
Thos M. Duke
Humphrey Jackson
Rawson Alley
Lau[ren]ce Rich Kenney
Shubael Marsh

Samuel M. Williams
Secretary

[p. 3] List of the individuals who obtained votes for the office of *sindico procurador* of this town in the municipal assembly held on the 10th day of this month, in accordance with the special order of the Governor of the State, dated November 17 of the past year and communicated by the political chief of this department on December 11 of the same year through a commission to Citizen Empresario Stephen F. Austin for holding this assembly.

Names	Votes
Rawson Alley	218
M. B. Nuckols	3

Town of Austin February 10, 1828.

Estevan F. Austin, President
Green B. Jameson, Teller (*escrutador*)
Rawson Alley, Teller
Samuel M. Williams, Secretary.

[p. 4] List of the individuals who received votes for alcalde of this town in the municipal assembly held therein the 10th of this month in accordance with the special order of his Excellency the Governor of the State the 17th of November of the past year,

and communicated by the political chief of this department December 11 of the same year by means of a commission to the Citizen Empresario Stephen F. Austin to preside over the said assembly.

Names	Votes
Thomas M. Duke	121
Ira Ingram	111

Town of San Felipe de Austin, February 10, 1828.

Stephen F. Austin, President
Green B. Jameson, Teller
Rawson Alley, Teller
Samuel M Williams,
Secretary.

[p. 5] List of the individuals who obtained votes for the office of *regidor* of this town in the municipal assembly held therein the 10th of this month in accordance with the special order of his Excellency the Governor of the State the 17th of November of the past year, and communicated by the political chief of this department December 11 of the same year by means of a commission to the Citizen Empresario Stephen F. Austin to preside over the said assembly.

Names	Votes
Thomas Davis	223
Humphrey Jackson	96
William Morton	92
H. H. League	24
Wyly Martin	15
J. H. Bell	1
L. R. Kenny	1

Town of San Felipe de Austin, February 10, 1828.

Estevan F. Austin, President
Green B. Jameson, Teller
Rawson Alley Teller
Samuel M. William, Secretary

[p. 6] **In virtue of the foregoing act of election in which citi-

**The matter between the ** is from the English original, pp. 6, 6a, 7, 7a, and 8.

zen Thomas M. Duke was elected Alcalde, Citizens Thomas Davis and Humphrey Jackson were elected Regidors and Citizen Rawson Alley as Sindico Procurador and the said Individuals having under said act taken the oath prescribed in art. 220 of the state constitution proceeded to the installation of the Municipal Ayuntamto for the judisdiction of Austin—The Persons aforesaid took their respective places presided by Citizen Thomas M. Duke Alcalde and having declared themselves as ready to proceed to the discussion and organization of the subjects more immediately connected with their formation—The Ayuntamto was proclaimed to be duly installed and organized and then proceeded to the discussion and decreeing the following subjects—First the appointment of Secretary—the Secretary of the jurisdiction having declined the appointment ordered that means be adopted to procure a Secretary and appoint and commission him in order to attest the acts of the Ayuntamto as the Law requires and until such appointment Citizen Samuel M. Williams is hereby authorized to attest to the proceedings of this meeting and the acts of the Ayuntamto and should the appointment of secretary not be verified [p. 6a] to the next meeting he will be considered as acting Secretary Pro Tem. at such next meeting, and should his Situation permit a further continuance and no person be appointed he can continue to act until such appointment is verified—Second The Existing necessity of Stationary Quills Ink etc. require the immediate attention of this body. Therefore ordered that Citizen Thomas Davis be and is hereby appointed a committee to procure on the faith of the Ayuntamto a sufficient quantity of stationary Quills Ink etc. a house or convenient building for the Ayuntamto to hold its meetings and to keep the archives of the Ayuntamto and Alcalde and a sufficient Book or paper case for the preservation of the archives of this body and the Alcalde a Table and seats for the same as soon as practicable and report at the next meeting what he may have done 2d Ordered that the acting secretary extend the necessary official notices for the Govr of the State, Chief of the Depart. and the Ayuntamto of Nacogdoches LaBahia and Bexar of the installation of this Ayuntamto and answer the official letters recd through Citizen Stephen F Austin this day from Chief of Department—Further ordered that Citizen Thos

M. Duke be appointed a committee to draw up an address to the people in the form of a subscription paper exhorting the Inhabitants to afford such assistance as may be convenient for [p. 7] the construction of a Court House and jail or either of them as the amt recd may justify and in the opinion of the Ayuntamto may be most necessary—Further ordered that in obedience to the official order of the Chief of Department dated 5th February in this year that the necessary instructions be issued to the Regidor of this body and C[itizen] Thomas Davis and the sindico Procurador Citizen Rawson Alley and the commissarios of the Precincts of Victoria and Mina for the taking of the census of this Colony in the manner and form described in the plan accompanying the said official order. The commissario of Mina will take the Census of the whole of his precinct, the commissario of Victoria will take that of the whole of his precinct except that on the waters of the Buffalo Bayou and San Jacinto which will be taken by the sindico of that Precinct—The Regidor Thomas Davis of this body will take that part of the District of San Felipe below the Coshatie crossing down to the precinct of Victoria and the Sindico procurador Rawson Alley will take that part of the District on the Colorado down to the precinct of Mina and above the Coshatie road on the Brazos River. The Ayuntamto adjourned [p. 7a] uutil the 9th day of March 1828 San Felipe de Austin 12th of Feby 1828

Thos M. Duke
Pres. Ayuntamto

Attest
Samuel M. Williams
Sectry Pro Tem—

I do certify that this is a true copy from the original record of the meeting which was drawn on Blank paper and transferred to the Sealed Record of Proceedings of Ayuntamto

Thos M. Duke
Pres. of Ayuntamto

San Felipe March 14th 1828

[p. 8] The Ayuntamto met according to adjournment The Secretary Pro Tem being out of place the meeting was adjourned to the 14th instant on that day they again met and the secretary

pro tem Samuel M. Williams declining to serve citizen Stephen F. Austin was chosen Secretary pro tem to this meeting

Members Present Citizen Thomas M. Duke Pres of Ayuntamto Citz Thomas Davis Regidor and citz. Rawson Alley sindico Procurador having declared themselves ready Proceeded to business— In the first place they agree to forward the following proposition to Government. *to wit****

The public resources (*fondos proprios*) of this jurisdiction consist of the lots of the town of Austin and the public ferry here on the Brazos River. The first have not as yet produced enough to pay the necessary charges of the surveyor who surveyed the lots and made the plat of the town, and there is little hope that they will produce anything for this year. The second is leased for this year for the sum of a hundred dollars.

Public funds lacking, the ayuntamiento proposes to the government the following taxes to cover the two estimate which are submitted: One of $750 for municipal expenses, and the other of $4,000 to build a [p. 8a] jail and town hall.

towit:

For license to citizens or inhabitants legally established as such for keeping a dry goods store, $5 for each six months, payable at the time of taking out the license.

For the same to foreigners, $10 for each six months, payable in the same way.

For the same to citizens to sell merchandise and liquors, $7.50 each six months.

For the same to foreigners for the same purpose $15 for each six months, payable in the same manner.

The same to public inns in which liquors are sold, $7.50 payable in the same manner.

The same for inns in which liquors are not sold, $5 for each six months, payable in the same way

The same for selling peddler's goods—for citizens, $5 each six months; for foreigners, $15 each six months, payable in the same way.

One dollar a year for each slave, of whatever age or sex, payable one-half each six months by the owner.

Twelve and a half cents a quintal on all merchandise, not the

produce of the jurisdiction, exported from the jurisdiction or passing through its territory in transit.

[p. 9] Twelve and a half cents for each head of cattle driven from the jurisdiction, except those belonging to emigrants or citizens who are going to establish themselves in other parts of the state.

Half a real [6¼ cents] for each head of small cattle [sheep, goats, etc.] driven from the jurisdiction, with the above exception.

Five per cent on the cost of the original manufacture of all merchandise or goods introduced in the jurisdiction, except liquors, and five cents[7] a gallon (*galón*) of five *quartillas* for liquors.

Two and a half cents a gallon, of five *quartillos,* on liquors made of corn or any other product in the jurisdiction.

The ayuntamiento, under its responsibility, is to name the persons and formulate the regulations which it considers necessary for collecting and securing the exact assessment (*cobro*) of these taxes, and shall have authority to fine any one who tries to defraud the municipal funds in the assessment or payment of the said taxes to three times the amount of the fraud which was so attempted or effected, after trial of the case before the alcalde.

[p. 9a] Any one who sells anything or who opens an inn under circumstances which require a license, as previously mentioned, before having obtained the appropriate license, shall be held for a defrauder of the public funds and fined to three times the price of the required license, in conformity with the above.

Town hall of the Villa of Austin, March 14, 1828.

Estimate of municipal expenses for the jurisdiction of Austin for the year 1828, made in conformity with article 134[8] of law No. 37, of June 13 [15], 1827.

To wit:

Salary of a Secretary learned in the Spanish and English languages, who can also serve as translator	$350
House rent until the town hall is built	100
Cost of paper and other things for the Secretary's office	100
Mileage of members attending meetings of the ayuntamiento	200
	$750

[7]The expression is *cinco sueldos.* A footnote explains that "by *sueldo* is understood the hundredth part of a dollar."

[8]See note 2, p. 299.

Note—The sum of $200 is suggested to pay the personal expenses of the members of the ayuntamiento because one of them lives thirty [p. 10] leagues and another ten leagues from the town, and, since they have no house in town, must pay their expenses from their own pockets—a charge which they consider somewhat heavy to pay from their own funds.

Town of Austin, March 14, 1828

Estimate of the cost of building a jail and town-hall in the Villa of Austin, formed by the ayuntamiento in accordance with article 134 of law No. 37, of June 13 [15], 1827.

To wit:

For building of jail.....	$1,000
For building of town-hall.....	3,000
	$4,000

**Villa de Austin 15th de Marzo de 1828

Ordered that a provisional Election be held on the thirtieth day of this month for one Captain and two Lieutenants in the former district of Colorado at the house of James Cummens—Likewise ordered that a provisional Election be held on the 6th of April next for One Captain and two Lieutenants in the former District of Bravo at the LaBahia Crossing of the River Brazos. The Ayuntamto adjourned until the 12th of April next.

San Felipe de Austin—March 15th 1828

Thos M. Duke
Prest Ayuntamto

Attest
Stephen F. Austin
Sy pro tem

[p. 10a] March 31st 1828. Having presented the individuals charged by this body to take the census their respective lists from which must be formed and remitted to the Chief of Department the Census of this jurisdiction in Conformity with the form recd from the said Chief up to this day and remitted to the same by the next mail.

**The matter between the ** is from the English original, p. 10.

Villa de Austin 31st March 1828.

Considering the paralized state of immigration to this Jurisdiction from the U. S. arrising from the difficulties encountered by Imigrants in bringing servants and hirelings with them, this Body conceive it their duty to propose to the Legislature of this state through the Chief of Depart a project of a Law whereby emigrants and inhabitants of this state may be secured in the Contracts made by them with servants or hirelings in foreign countries which project the prest will make out in the following terms to wit. "Are guaranteed the Contracts made by emigrants to this state or Inhabitants of it with the servants or hirelings they introduce" and solicit the said Chief to forward it on to the Legislature with [p. 11] such additional influence as he may think proper to extend to it. Villa de Austin 5 de Abril de 1828.**

[MUNICIPAL ORDINANCE[a]

The Governor of the State of Coahuila and Texas to all its Inhabitants—Know Ye, that the Congress of said state have decreed as follows:

No. 100.—The Constitutional Congress of the free independent and sovereign state of Coahuila and Texas have enacted the following

MUNICIPAL ORDINANCE[a]

FOR THE GOVERNMENT AND REGULATION OF THE AYUNTAMIENTO OF AUSTIN

Chapter I

OF THE INSTALLATION AND INTERIOR RULES OF THE AYUNTAMIENTO, AND THE APPOINTMENT OF COMMITTEES

Art. 1. On the first day of January, of each year, the ayuntamiento, of the last year, shall convene, in public session, in con-

*The volume contains no minutes from March 14 to December 21, but in the *Texas Gazette* of October 31, 1829, appears a municipal ordinance which Austin says this ayuntamiento adopted and submitted to the legislature. The legislature passed it as Decree No. 100, May 30, 1829, but it is omitted from the official publication of the Laws of Coahuila and Texas. For that reason it is thought desirable to present it here.

aThis ordinance was formed by the ayuntamiento of 1828 (except the last chapter), in compliance with the 150th article of the law 37, regulating the executive branch of the state government, and it was transmitted to the governor, through the chief of department, to be laid before the legislature for approval.—Translator.

junction with the persons newly elected for the ayuntamiento of that year. The president of the last year's ayuntamiento shall then administer the oath prescribed by the constitution (220th art.) to the president of the new ayuntamiento; and the latter shall in like manner administer it, to all the newly elected members in regular order.

Art. 2. This act being concluded, the president of the old ayuntamiento, in order to inform the newly elected members and the people, at the beginning of each year, of the true situation of the municipality, and of its progress, shall deliver a written discourse, or message, to the new ayuntamiento in said public session; explaining, in general terms, the state of the municipality, and giving a detailed account of all subjects or business that may be unfinished, which are deemed to be interesting, and particularly of the state of public improvements, building, or other things which may require any expediture of the municipal funds; specifying minutely all contracts made with individuals in such cases; he will also state any defects or inconveniences which experience may have pointed out in the municipal ordinance, or in any of the municipal regulations, enacted by the ayuntamiento (bandos) suggesting the amendments [b] that may be deemed necessary to remedy such defects or inconveniences, and finally he will present a general account of the state of all municipal funds during the year of his administration, specifying, in detail, the ingress and egress of such funds, and stating any defects or inconveniences which it may appear, from experience, exist in this branch, as well as in all other branches of the administration, which are committed by the laws to the ayuntamiento.

Art. 3. Before the above stated session is adjourned, the new president shall call a session of the new ayuntamiento, for the

[b]The mode of amending the municipal ordinance, is by petition from the ayuntamiento to the legislature through the chief of department and governor, stating clearly the specific amendment that is required and the reasons which make it necessary, should the legislature approve of such proposed amendment it becomes a law and a part of the municipal ordinance, but should it not be so approved, it fails. The municipal regulations (bandos) which are enacted by the ayuntamiento can be amended or repealed by that body—any citizen or number of citizens, can petition the ayuntamiento, in a respectful and decorous manner, on any subject connected with the local regulations or affairs of the municipality which are placed by law, under the direction and control of that body; said petitions are presented by the sindico procurador.—Translator.

purpose of appointing the permanent or standing committees, which the ayuntamiento may deem necessary; such committees will be composed of one or more persons each; and the president will cause the former committees, of the last year, to deliver over to the new ones all the papers and document which may be in their possession, appertaining to said committees.

Art. 4. The special committees shall be appointed by the president, as the circumstance of any particular subject may require; and they may be composed of one, two or three individuals, at most, keeping always in view the qualifications of the persons selected.

Art. 5. No member of the ayuntamiento shall refuse to serve on committees, except for a just and sufficient excuse, which must be approved of by two-thirds of all the members of that body.

Art. 6. Each committee shall promptly, exactly and faithfully discharge the duties assigned to it, rendering an account to the ayuntamiento of any embarrassments which may present themselves, and being directly responsible to that body for any neglect or omission in executing the business confided to it.

Art. 7. The committees shall make a report to the ayuntamiento, in writing, on finishing the subject referred to them, and that body adopt such measures, on said reports, as may be necessary.

Art. 8. The committee charged with the examination and inspection of schools must make a report, on that subject, at each regular session of the ayuntamiento at least.[c]

Chapter II

of the sessions

Art. 9. The ayuntamiento shall hold a session on the first Monday of each month, if it is not a religious holiday, and if it should be, the session shall be held on the next following day that may not be a holiday.[d] The said sessions shall commence at ten o'clock, A. M. and shall continue as long as the ayuntamiento may conceive it necessary to complete the business on

[c]The ayuntamiento are the trustees and supervisors of schools and institutions of learning, within the municipality. See chapt. 6, law 37.—Translator.

[d]The religious holydays on which it is illegal to do business are designated in the Mexican almanacs by a double cross, thus ††.—Translator.

hand; and each member shall attend such sessions, unless absent with leave, or for a good and sufficient reason.

Art. 10. Any member who fails to attend the sessions, without good and sufficient reason, shall be fined not less than two nor more than ten dollars, which fine shall be applied to the municipal funds.

Art. 11. Any member of the corporation has the right to request an extra session of that body, whenever he may deem it necessary.

Art. 12. The president shall call such extra session on the presentation of a petition, requesting it either verbally or in writing; and no member shall fail to attend the same under the penalty prescribed in the 10th article.

Art. 13. Subjects shall be introduced and discussed methodically in the ayuntamiento; each member who wishes to speak shall notify the same to the president, who shall see that each one speaks in his regular turn, and that he is not interrupted while speaking.

Art. 14. The discussions shall be public, unless decency or other important circumstances require them to be secret.

Art. 15. The secret discussions shall continue as long as the subject may require.

Art. 16. The vote on all ordinary subjects shall be taken by calling upon those who approve to rise, and those who disapprove to keep their seats.

Art. 17. Whenever the subject is an important one, or whenever any member, in order to save his own responsibility, or for public information, should call for the ayes and noes, the vote shall be taken in that way and recorded, each member, as called, pronouncing his name, and stating whether he approves or disapproves.

Art. 18. The vote can also be taken by secret ballot whenever the question is relative to appointments, or whenever it may be deemed necessary. Such secret ballot may be taken by each member approaching the president or secretary, and signifying his vote, which shall be registered in his presence, or by means of tickets which shall be delivered to the president, who will deposit them in a ballot box, and the secretary shall take them out,

one by one, and pass them to the president, who will read them aloud, and declare the result of the election.

Art. 19. Should the president, presiding, not be a regidor he shall have no vote, except in cases of a tie and in elections, in which he shall always have a vote; should there be a tie in elections the vote shall be repeated; and in case of a tie the second time it shall be decided by lot.

Art. 20. In all votes a majority of one more than half the members present shall be sufficient to decide the question.

Art. 21. Good order shall be observed in all debates, and all harsh or offensive expressions against any member of the corporation shall be avoided. The debates shall not deviate farther from the subject, under discussion, than may be necessary to its elucidation.

Art. 22. Whenever the subject, under discussion, is relative to any member present, or to debts due by him in which the corporation are interested, he shall immediately retire, in order that the vote on the subject may be unembarrassed; he shall, however, have the right of making an explanation of the matter before the vote is taken.

Chapter III

of the president and his attributions

Art. 23 The alcalde or regidor, as the case may be, who presides over the corporation, shall report the subjects which are to be acted on by that body, and designate the order in which they shall be taken up according to their importance; and he shall also:

1st. Declare whose turn it is to speak, in conformity as the members may have signified their intention so to do,

2d. Call members back to the subject under discussion who may deviate from it,

3d. Call to order those who are rude or disrespectful,

4th. Adjourn the session to the day designated by this ordinance, and convoke extra sessions when necessary,

5th. Fine those who neglect their duty without a good and sufficient cause,

6th. Require the members to appear at the session in a decent manner, and cause the hall to be cleared when a secret session is

ordered, or when the spectators are disorderly, first calling them to order,

7th. Conduct the correspondence of the ayuntamiento, which shall be countersigned by the secretary,

8th. See that the orders of the ayuntamiento, which are committed to his charge, are duly complied with,

9th. And finally, he shall see that each one of the articles of this ordinance are duly and strictly complied with.

Chapter IV.

OF THE DUTIES AND POWERS OF THE AYUNTAMIENTO, AND OF THE REGIDORS AND SINDICO PROCURADOR.

Art. 24. The regidors and procurador have the right of speaking and voting in the ayuntamiento, and that body shall faithfully discharge all the duties prescribed by law No. 37, regulating the Executive Department of the State Government, and especially from art. 97 to 157, inclusive, of said law, adopting the necessary measures for that purpose.

Art. 25. The alcalde, regidors and procurador can be accused before the ayuntamiento, by any individual of that body, for any neglect of duty in their respective offices.

Art. 26. The ayuntamiento shall also watch over the conduct of the officers of the national government within their jurisdiction, and report any mal-conduct of said officers to the alcalde, and the sindico procurador shall deliver to him such documents as he may have on the subject and deem necessary, in order that the said alcalde may report the same to the government, to be acted upon as it may deem proper.

Art. 27. The sindico procurador is the procurator, (personero) of all the civil affairs of the municipality, and it is his duty to render an account to the ayuntamiento of the state of said affairs.

Art. 28. The ayuntamiento can enact municipal regulations (bandos) relative to the affairs of police and good order, basing them on the laws, and causing them to be obeyed by fines, applicable to the municipal funds; and it can particularly pass regulations or orders on the following subjects:

1st. Establishing the boundaries of the town and lands, appertaining to it, which cannot be given to individuals, because they belong to the permanent funds of the town, fondo de proprios.

2d. Relative to the height, quality and construction of all fences of fields, pastures, pens, or other lots.

3d. Relative to the roads and public bridges of the jurisdiction, specifying the manner of establishing and laying them off, opening and completing them, either by means of a tax in money, or by the personal labor of the inhabitants, divided in just and equitable proportions according to the circumstances.

4th. Relative to the timber and woods belonging to the commons of the town, and fining those who cut wood from them, without permission from the corporation.

5th. Relative to ferries over the rivers, where it is necessary to keep boats; granting licenses to individuals to establish them, subject to such rules and instructions as the ayuntamiento may make on the subject.

6th. Relative to the firing of the prairies or woods to the prejudice or injury of individuals.

7th. Relative to the appointment, duties, and emolument of the public surveyors of the municipality, to survey scientifically the public roads, also the streets, public squares and lots of towns, according to their original plans; and, also, all tracts or portions of land which may be sold by the inhabitants to each other, in order to prevent titles or deeds for land, from being made between individuals, without a previous scientific survey, by a surveyor appointed for that purpose, who shall be responsible for the exact and faithful discharge of his duties; because, without this precaution, there will be numberless sales and transfers of land between individuals, with the limits designated by imaginary lines, without being measured or marked; the inevitable result of which, must be confusion and litigation, in future, between adjoining proprietors; and it being the duty of the ayuntamiento to watch over the interests of the inhabitants, and the tranquility of the municipality, it should particularly do so by the appointment of municipal surveyors, and the regulation of their duties.

8th. Relative to the extermination of wolves, tigers and other animals of prey; and prohibiting the useless destruction of deer and buffalo.

9th. Relative to horses, mules, cattle, sheep, goats, hogs, etc. that have strayed off from their owners.

10th. Relative to tippling shops, taverns, drunkenness and

gambling, in order to prevent the abuses, disorders and evils resulting from unrestrained liberty in those things.

11th. Relative to poor orphans, beggars, cripples, and infirm aged persons, who are incapable of supporting themselves.

Art. 29. The ayuntamiento, so far as circumstances will permit, shall promote the establishment of a school in the capital of the municipality, for the purpose of teaching the English and Spanish languages, for which purpose they will form a plan and transmit it to the governor, through the regular channel, to be presented to the legislature for approval.

Art. 30. The attention of the ayuntamiento shall be principally and particularly directed to the local police of the municipality, comprehending the important subjects: the security of persons and property of the inhabitants, the public health and convenience, and the ornament, regularity and good appearance of the town.

Art. 31. These objects shall be divided out amongst permanent committees, who shall execute the orders and instructions issued on the subject by the ayuntamiento, observing also the provisions of law 37.

Chapter V.

of meetings on days of public festivals.

Art. 32. The ayuntamiento shall convene on the days designated by law as National Festivals.

Art. 33. Whenever that body is convened by the president, to any of the above named sessions, no member shall fail to attend without a good and sufficient reason under the penalty of three dollars, applicable to the municipal funds.

Art. 34. On such occasions the military, and national and state officers, shall take the station in the ayuntamiento next after the alcalde.

Art. 35. The uniform and badges designated by law, are the only ones which shall be used on such occasions; and they shall be worn with proper decency and decorum.

Art. 36. Should the governor or lieut. governor of the state visit this town, and wish to attend any such public sessions, a committee of the ayuntamiento shall wait upon him, at his lodgings and conduct him from thence to the municipal hall, to proceed from thence to the church, in procession, and at the conclusion, the same committee shall reconduct him back to his lodgings.

Chapter VI.

OF THE SECRETARY OF THE AYUNTAMIENTO.

Art. 37. It shall be the duty of the secretary to record all the acts of the ayuntamiento, in both the English and Spanish languages, placing one opposite to the other, in the same book, to avoid mistakes.

Art. 38. He shall also translate into English, in writing, all the orders and decrees which he may receive from the ayuntamiento or its president; and he shall file such translation with its respective original, to prevent their being lost or misplaced; it being well understood that, should the secretary fail to comply with the duties imposed on him, by this and the foregoing article, he shall suffer the penalty of twenty-five dollars, applicable to the municipal funds.

Art. 39. The secretary shall keep a book of acts, in which shall be recorded a brief, clear and substantial account of all matters discussed and put to vote in the ayuntamiento, and of every resolution of that body, whatever may be its nature.

Art. 40. He shall give information on any subject, whenever it may be necessary for him to do so, but without taking part in the discussion.

Art. 41. He shall, on the opening of each session, read the record of the proceedings of the last session, which being approved of, or amended, by that body, he shall render an account of the public correspondence and all other matters which may have occurred.

Art. 42. The archives of the ayuntamiento shall be under his charge and responsibility; and he will deliver such documents as may be called for by the committees, alcalde, regidors, state's attorney, attorney appointed by the ayuntamiento to defend its interest, or any other public functionary, requiring a receipt from the person taking such documents.

Art. 43. He shall not permit any individual (not comprehended in the preceding article) to take from the office, any papers or documents that have been filed or recorded; but he can permit the examination of them in the office, and in no other way.

Art. 44. He shall also execute whatever the corporation may order relative to the discharge of his duties.

Art. 45. The secretary, as an individual of the ayuntamiento, shall attend all the public sessions, on festival days, and shall wear the badges and uniform corresponding to him, and shall take the seat next after the procurador.

Art. 46. He can be removed from his office by a resolution of the ayuntamiento; but his salary cannot be augmented or diminished without the approbation of the government.

Art. 47. In case of the sickness, absence, or other impediment, which prevents the secretary from discharging his duties the ayuntamiento, can appoint an individual to supply his place, in conformity with art. 149, of law 37, regulating the executive department of the state government.

Chapter VII.

of the municipal funds.

Art. 48. There shall be a treasurer, (depositario,) to take charge of the municipal funds, who shall be appointed by the ayuntamiento annually, under its responsibility: any member can save himself from said responsibility by expressly entering on the journal, at the time the vote is taken, that he did not vote for the person appointed by the majority, and therefore will not be responsible for him.

Art. 49. The treasurer shall keep an exact account, with the proper vouchers of the ingress and egress of all the funds placed under his charge.

Art. 50. The person shall be elected treasurer who receives a majority of the votes of the members present at the election.

Art. 51. The treasurer may be elected from the members of the ayuntamiento, or from the other citizens of the municipality, and he can be re-elected without limit.

Art. 52. The duties of the treasurer shall be:—

1st. To keep an exact account of the ingress and egress of the funds committed to his charge, with each item authenticated by its proper voucher.

2d. He shall only make the payments which may be ordered by the ayuntamiento.

3d. He shall form a general account of said funds at the end of each year, and present it to the ayuntamiento, to be revised, authorised and transmitted to the government for its approbation.

Art. 53. The ayuntamiento shall not order any disposition of said funds, which are not peculiarly applicable to the expenses of the municipality, and which have not been previously approved of by the government.

Art. 54. Should the treasurer make any exhibitions in his accounts other than those above designated, he shall not receive credit for them at the time of revisal and approval of the account.

Art. 55. The treasurer shall receive an emolument of two and a half per cent. on the whole amount of funds he receives during the year of his appointment.

Chapter VIII.

of taxes, (arbitrios.)

Art. 56. In the years 1829 and 1830, there shall be collected from the proprietors of property hereinafter enumerated, the following sums, to wit: At the rate of four and a half dollars for each league of land; and at the rate of one dollar for each labor granted in the jurisdiction of Austin; half a bit, (6¼ cents) per head, for each head of horned cattle over one year old; four bits per head for each head of American horses; one bit per head for each head of common or unbroken horses or brood mares; two bits per head for each head of mules; six bits per head for each head of jacks (burro;) two cents for each head of hogs; two dollars for each negro servant; one dollar for each town lot; two dollars for each out lot, belonging to the plan of the town.

Art. 57. Each person who exercises the profession of public agent to attend to the business of individuals, before the alcalde of the jurisdiction of Austin, shall pay 25 dollars annually—these persons are those who act as lawyers:—And should the person acting as agent, as aforesaid, be a foreigner, not legally established in this country, he shall pay one hundred and fifty dollars annually to exercise the agency spoken of in the first part of this article.

Art. 58. Each person who sells merchandise in the jurisdiction of Austin, and who is a foreigner not legally established, agreeably to the Law of Colonization, as an inhabitant of said jurisdiction, shall pay to the municipal funds the sum of one hundred and fifty dollars, for each store or establishment, and shall take out a license to that effect, for each store or establishment, from

the ayuntamiento, to sell goods in said jurisdiction for one year from its date; and whoever sells, or attempts to sell, any merchandise whatever, within said jurisdiction, before he shall have presented himself to the ayuntamiento, paid the said hundred and fifty dollars, and taken out said license, shall incur the penalty of treble the amount of said licence.

A foreigner who delivers his merchandise to a citizen of the jurisdiction to sell for him, shall pay five per cent. on the amount of sales, and the person who sells them shall be responsible for the same, for which purpose he shall render a certified account under oath, every three months, to the ayuntamiento, of the amount which he may have sold of merchandise belonging to a foreigner; and shall pay over to the treasurer of the ayuntamiento, every three months, the said five per cent. on such sales, under the penalty of treble the amount which he fails to render an account of.

Art. 59. Each merchant of the jurisdiction, legally established, according to the Law of Colonization, shall pay to the municipal funds twenty-five dollars, for each store or establishment which he may have in the jurisdiction, and shall take out a licence from the ayuntamiento to sell goods within the same, for one year from its date. Whoever sells, or attempts to sell, any merchandize whatever, within said jurisdiction, not being of the produce of the same, before he shall have presented himself to the ayuntamiento, paid the said twenty-five dollars, and taken out the said licence, shall incur the penalty of treble the amount of said licence.

Art. 60. Each person who establishes a tipling shop or grocery, for the retail of liquors, being a foreigner not legally established, shall pay one hundred and fifty dollars a year, for which purpose he shall take out a licence, as in the other cases, and shall be subject to the same penalties, and should he deliver his liquor to a citizen, to sell for him, he shall pay five per cent., as in cases of merchandise, under the same regulations before established.

Art. 61. Each person who establishes a tipling shop or grocery for the sale of liquors, being a citizen legally established, shall pay to the municipal funds fifty dollars a year, and shall take out a license to that effect, from the ayuntamiento, under the same formalities and subject to the same penalties as in other cases.

Art. 62. It is positively prohibited that any person who has not taken out a licence for a tipling shop or grocery shall sell under any pretext whatever, any ardent spirits or wine, in a less quantity than one gallon, English measure; and it is also prohibited that any portion of this quantity be drank in the store, or in its door or porch, portal; whoever fails in complying with this article, shall incur the penalty of paying the value of a retail licence; whoever sells dry-goods in a store licenced as a grocery, shall pay the value of a dry goods licence, besides that of a grocery licence.

Art. 63. Whoever may wish to establish a public house or tavern, shall take out a license to that effect from the ayuntamiento, which shall be given gratis under the regulations and restriction, which it may deem necessary to prevent such taverns from becoming the receptacle of suspicious persons or that any other liquor is sold at them, than what may be necessary for the consumption of the guests. The ayuntamiento shall have said taverns under its inspection, and can annul the licence before mentioned, and exact the value of a tipling shop licence, whenever in the opinion of the ayuntamiento, such tavern has become more properly a tipling house, than one for the accommodation of travellers.

Art. 64. Any sales, of merchandise or liquors, made on board of any vessel or boat in the bays or rivers are comprehended in the foregoing articles.

Art. 65. The ayuntamiento under its responsibility, shall form such general rules, as may be necessary to collect the said taxes, enforcing the exact observance of them by fines, and it shall form a list comprehending the names of each taxable individual and the amount, which he or she has to pay in conformity with the basis herein established; copies of which list shall be put up in 6 public places at least, besides the one which must be posted up at the capital of the jurisdiction, in order that all persons may be informed thereof, which amount shall be paid on or before the first of November, for the year 1829, to the treasurer of the public funds and for the year 1830, the half shall be paid by the first of June and the other half by the first of November, of the said year, and the alcalde at the request of the ayuntamiento shall deliver to the sheriff, alguacil, of the jurisdiction an execution

against the property of the person who fails in said payment, with orders to make the money by the public sale of the property of the delinquent, in the term of twenty days and the cost of said execution shall be paid by the delinquent.

Art. 66. All the funds that remain after appropriating what may be necessary for the court-house, jail and ordinary expenses, shall be applied to the building of a school-house.

Art. 67. All the foregoing taxes shall cease without any pretext whatever, at the end of the year 1830, and the ayuntamiento, shall in anticipation, form and transmit to the government, a plan of permanent or real funds, proprios, and taxes, arbitrios, which are to be perpetually collected to meet the ordinary and annual expenses of the corporation.

The Governor of the State shall cause it to be complied with, printed, published and circulated.

Given, in the City of Leona Vicario, 30th May, 1829.

Jose Manuel Cardenas, President—Ramon Garcia Rojas, Member and Secretary—J. Maria Aragon, Member and Secretary.

Therefore, I order it to be printed, published and circulated, and due compliance be given to it.

Leona Vicario, 7th June, 1829.

Jose Maria Viesca.

Santiago Del Valle, Sec. of State.]

[p. 11a] Town of San Felipe de Austin, Dec. 21, 1828.

There was a meeting of the ayuntamiento of the jurisdiction of Austin and the presidents, secretaries, and tellers of the municipal assemblies, which, in accordance with an order, were convoked, as provided by article 164 of the State Constitution, on the second Sunday and day following to elect the members of the new ayuntamiento. From the lists formed in the electoral assemblies the following list of the votes cast for alcalde was made up, as required by article 97 of law No. 37, as well as by articles 99[10] and 100:

[10]"Art. 97. In each of the electoral municipal assemblies which are to be held, in conformity with the 164th article of the constitution, on the second Sunday and day following of the month of December, there shall be formed three lists; in one shall be set down the names of the persons voted for for alcalde, without distinction of first, second and third; in another and like manner those voted for for regidores; and in the other those voted for for syndico procurador."

"Art. 99. The two days of election in which the polls are to be kept open being concluded, the president, tellers, and secretary of each elec-

Joseph White received 78 votes, Stephen Richardson 59 votes, and Jonathan C. Peyton 10 votes.

Ira Ingram	Thomas M. Duke
John McCrosky	Thomas Davis
John Hinkson	Rawson Alley
Green B. Jameson	

[p. 12] Town of San Felipe de Austin, Dec. 21, 1828.

There was a meeting of the ayuntamiento of the jurisdiction of Austin and the presidents, secretaries, and tellers of the municipal assemblies, which, in accordance with an order, were convoked, as provided by article 164 of the State Constitution, on the second Sunday and day following to elect the members of the new ayuntamiento. From the lists formed in the electoral assemblies the following list of the votes cast for regidor was made up, as required by article 97 of law No. 37, as well as by articles 99[10] and 100:

Hosea H. League received 108 votes, and George B. Hall 3 votes.

Ira Ingram	Green B. Jameson
John McCrosky	Thomas M. Duke
John Hinkson	Rawson Alley

[p. 12a] Town of San Felipe de Austin, Dec. 21, 1828.

There was a meeting of the ayuntamiento of the jurisdiction of Austin and the presidents, secretaries, and tellers of the municipal assemblies, which, in accordance with an order, were convoked, as provided by article 164 of the State Constitution, on the second Sunday and day following to elect the members of the new ayuntamiento. From the lists formed in the electoral assemblies the following list of the votes cast for sindico procurador was made up, as required by article 97 of law No. 37, as well as by articles 99 and 100:

William Cooper received 82 votes, and Green B. Jameson 33 votes.

Ira Ingram	Green B. Jameson
John McCrosky	Thomas M. Duke
John Hinkson	Rawson Alley

torate assembly shall form a list of the votes received by each individual, which being done, it shall be signed by said president, tellers and secretary, and sealed up and delivered to the secretary of the ayuntamiento."

[p. 13] San Felipe de Austin, January 1, 1829.

The ayuntamiento of the jurisdiction of Austin met. Present: Alcalde Thomas M. Duke, *Regidor* Thomas Davis, and *Sindico Procurador* Rawson Alley. Absent: *Regidor* Humphrey Jackson. There were also present the newly elected members, with the exception of William Cooper, *sindico procurador* elect, who was absent. The retiring president, in conformity with the first article of the municipal ordinance,[11] as well as in conformity with article [104] of law No. 37, received from the incoming president, Joseph White, the oath prescribed by article 220 [of the Constitution]. He in turn received the oath from Hosea H. League, as *regidor* in accordance with the articles of the ordinance, law No. 37, and Constitution cited. Thomas Davis in conformity with article 162 of the Constitution remained [regidor] from the past year, and *Sindico Procurador* William Cooper being absent, did not take the oath.

Thomas M. Duke.

Samuel M. Williams, Secretary pro tem.

[p. 13a] Town of Austin, January 10, 1829.

The ayuntamiento met in special session, with the president and the two *regidores* present, the *sindico procurador* being absent. The question for discussion was submitted and the president recognized H. H. League, 2d *regidor,* who said that for the better procedure (*arreglo*) of this ayuntamiento, as well as to discharge the duties imposed on the body by the laws, it is very necessary to appoint a secretary acquainted with the two languages, and with sufficient knowledge to attend to its business. With this object he proposed that this ayuntamiento appoint Citizen Samuel M. Williams Secretary of this ayuntamiento, with the salary which this body may consider necessary in order that the said Williams may be able to accept the office. This body authorized Mr. League, the Secretary pro tem., to send to the said Williams by letter notice of his appointment.

J. White.

H. H. League [Secretary] pro tem.

[11]See above, p. 311.

BOOK REVIEWS

The Early History of Cuba, 1492-1586. By Irene A. Wright. (The Macmillan Company. New York. 1916. 371 pages with Glossary and Index.)

This book, as the preface states, is the first history of Cuba written from the original sources. It is divided into four sections corresponding with the same number of periods. The first, from 1492 to 1524, describes the conquest and early settlement of the Island by the Spaniards. Some account of the first voyages of Columbus is given, the work of Ovando at Española is described, Las Casas' blood-hound episode is revived, and finally we are given a picture of the early conquest and government of Cuba by Velásquez. The latter is shown in the unsual unfavorable light. With Cuba and the West Indies established as a base of operations, and weakened by the migration of settlers to *tierra firme,* the writer returns to "An Era of Stagnation (1524-1550)." Four chapters are devoted to the relation of events in Cuba, one treats of the early Florida expeditions from the viewpoint of Cuba and another (with XVI the most enlightening in the book) deals with the social, municipal, argricultural and commercial development of the Island during this period. Notwithstanding the title of this section it is possible to see that the Spaniards were established on a firmer foundation than is suggested, perhaps, by the term "Pestilence of the Repartimiento."

The third division of the book traces the history of Cuba under the "French Influence," which, we note, is the author's way of characterizing the piratic efforts of certain individual Frenchmen after 1537. Of French hostility there seem to have been two periods, before and after 1568, the first being manifested by piracy and annoyance, such as isolated attacks on towns and fleets, and the second, based on more intense international rivalry, induced by the failure of the Canadian expeditions. The result of this period was the fortification of Havana, and the inauguration of *armadas* for the protection of the fleets against French attacks. The occupation of Florida and the career of Menéndez de Avila are given briefly from the Cuban viewpoint, with em-

phasis as usual on Spanish savagery. The fourth and final section of the book treats of the danger of the English (1567-1586). It gives briefly the European political setting: a background of Elizabeth's change of policy, the new commercial England, and it ends with the operation of Drake in the West Indies. The effect of these events on Spain's policy and methods in Cuba were that "Spain took a firm hold at last upon her priceless possession of Cuba: 'bulwark of the Indies, key to the New World.' The Island ceased to be a wayport of empire, a mere base of operations for exploitation of Mexico, the southern continents and Florida. It came to be prized not alone for its strategical importance but also somewhat for its own inherent value in sugar, in copper and in woods."

This book, as the author announces in the introduction, was written on the basis of original documents existing in the Archive of the Indies at Seville, "with regard, however, to the few published works which are of value in a study of this portion of Cuba's development." The author then proceeds to a statement that the history of the Island has not been written until this present book. The statement is also made that in the compilation of this book, secondary books have been ignored, even Pezuela, because of the confidence that "there has passed through my hands a greater wealth of material for the writing of the history of Cuba than any other person has handled." It is usually dangerous to attempt a treatment of the institutions of Spanish America, even in the early period, without a reference at least, to the recognized authorities who have written on the general subject. It is axiomatic that the exclusive use of documents may and almost always does lead one astray. Surely the judgment of those who have already written on Cuba and Spanish America should not be laid aside so summarily. Solórzano, Helps, Bancroft, Robertson, Lowery, Vander Linden, Moses should be considered when one traces the early institution and movements in Spanish America.

Although the writer acknowledges the necessity of citing authorities, there is not a direct citation in the book. The author has incorporated an imposing-looking legajo-list in the foreword of each section, but this is not sufficient. A multitude of errors

may be concealed in a legajo-list, and any scholar who desires to verify a statement or follow a lead indicated in this book will have to search through fifty legajos at least. For this technical reason alone the book will fail to convince. It is avowedly an attempt at historical scholarship, composed without the necessary tools, and written in popular style, wherein Cuba is referred to as "a lemon little worth of squeezing" (p. 212), Mazariegos is characterized as "the man for the job" (p. 245) and Gallegos got a "ducking in the bay," being "doused" (p. 274) repeatedly.

The most serious defect of the book lies in its lack of perspective. While the *repartimiento* may have been a pestilence in Cuba, there is no inkling of the author's appreciation of its benefits in Cuba or elsewhere. The Church, the Inquisition and Spanish bigotry are all characterized as if for the first time, when, as a matter of fact, only the old-fashioned or extremely superficial historical writer harps on that chord any more. It seems strange that more than a year of research in the best colonial archive in Spain could not be productive of a more enlightening and sympathetic treatment of Spain's early colonial institutions, which were a hundred years in advance of those of any other colonizing nation. A very summary review of the obvious phases of English and French history will reveal that Spain was not alone in religious bigotry. The same may be said with regard to Spain's lust for gold, the blood-hound hunts and other cruelties so maliciously perpetrated. (Compare New England cruelties in Pequod and King Philip's Wars.) Unfavorable comment abounds in this volume relative to Spain's restrictive commercial policy, with contrasts to that of England and France. The author misses the splendid opportunity to recognize that Spain was a pioneer in the upbuilding of a commercial and colonial system and that her errors were but little more extensive than those of her competitors, during the early period. History does not justify the depiction of Drake and the other freebooters of his nation and time in the rôle of angels of righteousness and deliverance (see pages 28-36, 195-196, 211-212, 243-244, 271, 272.) However accurate may be the statements which Miss Wright makes, there is an undue and disproportionate emphasis on the defects and too little reference to the constructive work of Spain which was to

obtain through three centuries and lay the racial, social and political foundation for a discriminating and intelligent Commonwealth.

Untranslatable Spanish words are very properly used in the text, but as long as it is possible to be absolutely correct, there is no excuse for the total absence of accents from such words as *bohío, cédula, maravedí, clérigo, inéditos, colección, cámara, fundición,* and every other word requiring an accent. *Naburia* (on page 152) appears as *naboria* on 195. One is correct. *Maravedises* (174) is inaccurate. It is to be hoped that the volume which succeeds this, if there be one, may be written in the third person, and not in the first. Because it is written in English and gives a connected history of Cuba in the sixteenth century, this volume will be of use to the general reader and the classroom student.

NEWS NOTES

The annual meeting of the Pacific Coast Branch of the American Historical Association was held at Berkeley, California, on November 30 and December 1. At that meeting two papers of general interest to students of Spanish-American history were read. These papers were "A Forgotten Pioneer of American History—John Gilmary Shea," by Father Joseph Gleason, of Palo Alto, California, and "The Influence of the United States in the Opening of the Amazon River to the World's Commerce," by Professor Percy A. Martin, of Stanford University.

Officers of the association for the ensuing year are: President, Rev. Joseph Gleason, Palo Alto, California; Vice-President, Professor O. H. Richardson, University of Washington; Secretary-Treasurer, Professor W. A. Morris, University of California; Members of the Council, Professor E. M. Hume of the University of Idaho, R. C. Clark of the University of Oregon, Waldemar Westergaard of Pomona College, and Miss Edna Stone of the University High School, Oakland, California.

Mr. E. L. Doheny, Los Angeles multi-millionaire oil operator, has given $100,000 as an endowment for the Doheny Research

Commission of the University of California. The purpose of this commission is to make a thoroughly scientific investigation of conditions—economic, social, and political—of Mexico at the present time. The results of the commission's investigations are to be published when completed.

The executive committee of the commission is composed of Professors Herbert E. Bolton and Bernard Moses of the University of California; Professor Chester Lloyd Jones of the University of Wisconsin; Dr. Thomas Jesse Jones of the Bureau of Education; Dr. Fred W. Powell, of New York, and Professor G. W. Scott of Occidental College. Other members of the commission are Dean F. H. Probert and Professors Herbert I. Priestley and Jessica Peixotto of the University of California; Professor Richard T. Ely of the University of Wisconsin; Dr. James A. Robertson of the Carnegie Institution; Professor Percy A. Martin of Stanford University; Professor Theodore Macklin of Kansas State Agricultural College; Professor W. W. Cumberland of the University of Minnesota; Dr. E. B. Christie of the Bureau of Ethnology; Dr. Arthur Young of Princeton University; Professor R. G. Cleland of Occidental College; Dr. H. E. Bard of the Pan-American Society, New York; Dr. H. M. Branch of New York and Mexico City; and Dr. E. C. Moore, President of the Los Angeles State Normal.

Judge Seth Shepard died at Washington, D. C., December 3, 1917. Judge Shepard secured the return to the State of the original manuscript declaration of the independence of Texas, which had found its way into the archives at Washington. He contributed the "Introduction" and an account of "The Siege and Fall of the Alamo" to "A Comprehensive History of Texas."

The Texas History Teachers' Bulletin, VI, No. 1 (November, 1917), prints ten letters written to Stephen F. Austin during 1821 and 1822 "which show the widespread interest in Austin's Colony in the United States and the motives of those who wished to emigrate."

Two letters from Frederick Law Olmsted, dated July 6 and 26, 1857, are printed in the *American Historical Review* (October, 1917). These letters, to quote the words of the editor, "Reveal

an attempt made in 1857 by the New England Emigrant Aid Society to enlist the aid of English cotton manufacturers in colonizing free laborers upon new land in the southwest of the United States."

"The Baptistry Window of the Mission of San José de Aguayo" is the title of an article by Harvey Partridge Smith in the *Western Architect* (November, 1917). It is illustrated. This window "is considered by connoisseurs to be the finest single bit of Spanish-Colonial ornamentation existing in America."

In the *New Yorker Staats-Zeitung,* September 11 to 21, 1917, appeared the following: "Die Deutschen in Texas während des Bürgerkrieges. Nach Aufzeichnungen von Richter A. Siemering, San Antonio im Jahre 1876."

"The mission as a frontier institution in the Spanish-American Colonies," by Dr. Herbert E. Bolton, appeared in the *American Historical Review* (October, 1917). It presents a summary of original researches into Spanish institutions in the Southwest that will mark an epoch in this field of study.

The centenary of the birth of Ernst Gustav Maetze was commemorated by his former pupils in unveiling a tablet to his memory at Oak Knoll Cemetery, Bellville, Texas, and an address at Millheim by W. A. Trenckmann, September 12, 1917. The address traced the life of Maetze and is printed in *Das Wochenblatt,* September 19.

"The assault upon the University of Texas" is dealt with by writers in *School and Society* (August 11 and September 1 and 29, 1917); *New Republic* (August 11, 1917); *The Outlook* (October 10, 1917); *Educational Review* (November, 1917), and *The Alcalde* (November, 1917).

William A. Eckhardt, a pioneer and prominent merchant of Yorktown, Texas, died at his home in that city October 29, 1917. A sketch of his life, written by Chas. F. Hoff, appeared in the *Yorktown News,* November 22.

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OF THE

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